

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joan Buonanoce	:	
	:	F-2022-3036833
v.	:	
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Complainant’s Complaint and finds that she is eligible to receive an extension of her last Commission-issued payment arrangement pursuant to 66 Pa.C.S. § 1405(e).

HISTORY OF THE PROCEEDING

On November 9, 2022, Joan Buonanoce (Ms. Buonanoce or Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant placed checkmarks in the boxes indicating that “[t]he utility is threatening to shut off my service or has already shut off my service,” “I would like a payment agreement,” and “[o]ther.” The Complainant alleged that PGW provides incorrect information. Under the “requested relief” section, the Complainant requested a payment arrangement, for the “cash only” hold to be taken off

¹ This Complaint is a timely appeal from a Bureau of Consumer Services determination at BCS No. 3855223.

of her account so she can use her credit card, and for PGW staff to provide her with correct information.

On December 7, 2022, the Respondent filed an Answer admitting that it issued a termination notice for the gas service to 813 Tomlinson Road, Philadelphia, PA (service address). The Respondent further answered: that PGW records indicate that the Complainant has had multiple broken PGW-issued payment agreements and at least one broken PUC-issued payment agreement; that on August 2, 2022, the Complainant contacted PGW and requested a medical hold; that on August 3, 2022, PGW denied the medical hold as all the medical holds available on this balance had already been utilized; that on November 4, 2022, the Complainant called PGW to inquire about the cash-only status of her account; and that PGW informed the Complainant that November 5, 2022 would be 12 months from her last returned payment and that the cash-only alert should come off at that time but could take an additional billing cycle. The Respondent requested that the Commission deny all relief requested in the Complaint.

By Initial Telephonic Hearing Notice dated January 13, 2023, an initial call-in telephonic hearing was scheduled for March 14, 2023 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on January 13, 2023. 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 she is entitled to the relief requested in the Complaint.

By Interim Order dated March 9, 2023, I granted the Complainant's first request for a continuance.

By Telephonic Hearing Cancellation/Reschedule Notice dated March 9, 2023, the initial call-in telephonic hearing was rescheduled for April 27, 2023 at 10:00 a.m.

I issued another Prehearing Order on March 13, 2023. The Prehearing Order again 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 she is entitled to the relief requested in the Complaint.

By Interim Order dated April 27, 2023, I granted the Respondent's first request for a continuance.

By Telephonic Hearing Cancellation/Reschedule Notice dated April 27, 2023, the Initial Call-In Telephonic Hearing was rescheduled for May 30, 2023 at 10:00 a.m.

By Interim Order dated May 25, 2023, I granted the Complainant's second request for an additional continuance.

By Telephonic Hearing Cancellation/Reschedule Notice dated April 27, 2023, the Initial Call-In Telephonic Hearing was rescheduled for July 13, 2023 at 10:00 a.m.

By Interim Order dated July 11, 2023, I denied the Complainant's July 9, 2023 request for a third continuance.

The hearing convened as scheduled on July 13, 2023. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Antonetti, a PGW Customer Review Officer. The Respondent submitted five exhibits, all of which were admitted into the record (PGW Exhs. 2-6).

The record closed on August 4, 2023, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Joan Buonanoce.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant resides at 813 Tomlinson Road, Philadelphia, PA. Tr. 13.
4. On April 23, 2020, the Commission issued the Complainant a payment arrangement on a balance of \$2,819.64. Tr. 30-31, 33; PGW Exhs. 3 & 4.
5. The Complainant defaulted on this payment arrangement. Tr. 31; PGW Exh. 3.
6. On February 17, 2021, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services seeking another payment arrangement. Tr. 33-34; PGW Exh. 5.
7. The Complainant reported gross household income of \$2,340.00 for a two-person household at the time of the February 17, 2021 informal complaint. Tr. 34; PGW Exh. 5.
8. On April 1, 2021, pursuant to the Commission's Public Utility Service Termination Moratorium Proclamation of Disaster Emergency-COVID-19 at Docket No. M-2020-3019244, the Commission's Bureau of Consumer Services issued a decision at BCS Case No. 3779991 authorizing a second payment arrangement for the Complainant for a term of 60-months and urging PGW to contact the Complainant within 20 days to offer the Complainant a payment arrangement. Tr. 34; PGW Exh. 5.

9. Pursuant to the Bureau of Consumer Services decision, the terms of the Complainant's second Commission-issued payment arrangement went into effect on April 21, 2021. PGW Exh. 3.

10. The Complainant defaulted on this second Commission-issued payment arrangement. Tr. 16, 19, 34-35, 39; PGW Exh. 3.

11. As of the time of the hearing, the Complainant's household consisted of she and her husband. Tr. 17.

12. The Complainant's husband's current gross monthly income is approximately \$3,000.00. Tr. 17, 22.

13. The Complainant is on medical leave from her employment with Margiati and Kroll Pediatrics due to health problems. Tr. 17-18, 20, 22-24.

14. The Complainant is not receiving any income while she is out of work on medical leave. Tr. 17, 23-24.

15. Prior to her medical leave of absence, the Complainant intermittently missed work due to her ongoing health issues. Tr. 24-25.

16. The Complainant also suffered from COVID in February 2022, May 2022, August 2022, and October 2022. Tr. 24.

17. The Complainant's outstanding balance as of the time of the hearing totaled \$4,895.57. Tr. 29; PGW Exh. 2.

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, the 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.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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). A preponderance of the evidence is 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 Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. 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 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. Cmwlth. 1982).

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. Cmwlth. 2001).

At the outset of the hearing, the Complainant indicated that she was only seeking a Commission-issued payment arrangement. The Complainant was no longer interested in pursuing any other claims raised in her Complaint.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–19 (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.

Regarding the length of payment arrangements, the Public Utility Code provides the following:

[t]he 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.

66 Pa.C.S. 1405(b).

Regarding the Complainant's request for an additional Commission-issued payment arrangement, the Public Utility Code provides that "[a]bsent 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." 66 Pa.C.S. § 1405(d). A "change in income" is defined at 66 Pa.C.S. § 1403 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."

Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e). A "significant change in circumstance" is defined as any of the following circumstances which are 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.

Regarding the Complainant's previous Commission-issued payment arrangement, the record reflects that the Complainant reported gross monthly income of \$2,340 for a two-person

household. The Complainant testified that her household is still a two-person household. Although the Complainant testified that she is currently out of work on medical leave, she also testified that her husband's gross monthly income is approximately \$3,000. Since, according to the Complainant's testimony, her gross monthly household income has actually increased, she does not meet the definition of a "change in income" set out in 66 Pa.C.S. § 1403. As such, the Complainant is not eligible for an additional Commission-issued payment arrangement.

Although the Complainant is not eligible for another Commission-issued payment arrangement, she may be eligible for reinstatement and extension of her payment arrangement issued at BCS Case No. 3779991. As cited, customers who have a household income of less than 300% of the Federal poverty level are eligible for reinstatement and extension of a Commission-issued payment arrangement if they defaulted on the arrangement as a result of having experienced a significant change in circumstance. 66 Pa.C.S. §§ 1403, 1405(e). The Complainant's household income of approximately \$3,000 for a household of two is below 300% of the Federal poverty level,² so it may be considered whether the Complainant is eligible for reinstatement and extension of the arrangement issued at BCS Case No. 3779991.

Regarding whether the Complainant experienced a significant change in circumstances causing her to default on the arrangement issued at BCS Case No. 3779991, the Complainant did not provide any evidence relating to having experienced the second, third, or fourth significant change in circumstances criteria. With regard to the first criteria, the Complainant testified that she has experienced ongoing health issues since 2015 that included a stroke and breast cancer. Tr. 39-40. The Complainant testified that she is on medical leave from her employment due to health problems with her immune system which has caused damage to her lungs. Tr. 18, 20, 22. The Complainant further testified that prior to her leave of absence she missed work intermittently due to health issues, and that she is not receiving any income while she is out on medical leave. Tr. 17, 23-25. The Complainant also testified that she suffered from COVID in February 2022, May 2022, August 2022, and October 2022. Tr. 24. The Complainant explained how her multiple health issues and frequent bouts with COVID have caused an on-going

² 300% of the Federal poverty level for a household of two is \$4,930. Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023). Also available at <http://aspe.hhs.gov/poverty>.

personal and financial strain on her and her household. Finding the Complainant's testimony credible, I conclude that the Complainant has met the first significant change in circumstances criteria, and her April 1, 2021 Commission-issued payment arrangement will be reinstated and extended for a period of six months.

Accordingly, the Complainant's Complaint is sustained, and her Commission-issued payment arrangement issued at BCS Case No. 3779991 will be reinstated and extended pursuant to 66 Pa.C.S. § 1405(e).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. 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. 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. 66 Pa.C.S. § 1405(d).

5. "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.

6. The Complainant failed to sustain her burden of demonstrating that she should receive another Commission-issued payment arrangement.

7. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e).

8. "Significant change in circumstance" is defined as any of the following circumstances which are 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; 3) loss of the customer's residence; and 4) increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

9. The Complainant defaulted on her Commission-issued payment arrangement as a result of having experienced a significant change in circumstances.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Joan Buonanoce at Joan Buonanoce v. Philadelphia Gas Works, Docket No. F-2022-3036833 is sustained;

2. That in accordance with Section 1405(e) of the Public Utility Code, 66 Pa. C.S.A. § 1405(e), the payment arrangement issued by the Bureau of Consumer Services on April 1, 2021 at BCS Case No. 3779991 is reinstated, and the remaining term is extended for an initial period of six months following the entry of a final Commission order in this case;

3. That if Ms. Buonanoce does not keep the reinstated payment arrangement, Philadelphia Gas Works is authorized to suspend or terminate her service in accordance with the Commission's statutes and regulations.

4. That the docket at Docket No. F-2022-3036833 be marked closed.

Date: October 31, 2023

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge