

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peter Mordeczko	:	
	:	
v.	:	F-2023-3041207
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complainant’s Formal Complaint because he failed to sustain his burden of proof to establish that the Respondent violated any provision of the Public Utility Code or any Commission rule, regulation or policy. He also failed to prove that he was entitled to a second Commission-issued payment arrangement because he defaulted on a prior Commission-issued payment arrangement and has not experienced a change in income that would support a second Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On May 31, 2023, Peter Mordeczko (Complainant or Mr. Mordeczko) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission).<sup>1</sup> In the Complaint, the Complainant

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<sup>1</sup> The Formal Complaint is an appeal to the Determination issued April 25, 2023, by the Commission’s Bureau of Consumer Services (BCS), in BCS Case No. 3903086 which dismissed an Informal Complaint filed by the Complainant, finding that the Complainant’s service had been terminated with proper notice and that the Complainant was ineligible for a Commission-issued payment arrangement. PGW Exh. 7.

indicated that the utility had shut off his service without proper notice and requested that the Commission establish a new payment plan. On June 29, 2023, Respondent filed an Answer denying the material allegations of the Complaint.

On July 11, 2023, a Hearing Notice was issued which indicated an initial hearing was scheduled in the matter for September 12, 2023, at 10:00 a.m., and assigned to me. I issued a Prehearing Order on August 10, 2023.

The initial hearing in this matter was held as scheduled on September 12, 2023. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered two exhibits for entry into the record, one at the hearing and a second as a late-filed exhibit. Both exhibits were identified by the Complainant during the hearing and the Respondent did not object to the entry of the Complainant's exhibits.

The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of one witness, Jessica Glace, a manager in PGW's Customer Review Unit. Respondent proposed eight exhibits at the time of the hearing. The Complainant did not object to the entry of the proposed exhibits into the record and all of the Respondent's proposed exhibits were entered into the record as late-filed exhibits.<sup>2</sup>

The hearing resulted in an 86-page transcript.<sup>3</sup> The record closed on October 5, 2023, when the transcript was filed with the Secretary.

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<sup>2</sup> The parties were directed to provide all exhibits to the presiding officer and the court reporter by the close of business on the day of the hearing. Both parties confirmed their understanding of the instructions concerning the procedure for the entry of documents into the record. Tr. 50, 78. However, the Complainant failed to provide his exhibits to the court reporter. The Respondent provided its exhibits, which are entered into the record via this Decision. Respondent's Exhibit 8 Bureau of Consumer Services (BCS) Decision No. 3903086 dated April 25, 2023, is the same document the Complainant had identified as Complainant's Exhibit 2.

<sup>3</sup> The transcript identifies the Complainant's address i.e., the Service Address, as 2635 East **Schiller** Street. However, the Complaint and all of the documentation provided by the parties indicate that the Complainant's address and the Service Address are located at 2635 East **Schiller** Street. *See, e.g.*, Complaint ¶ 1, PGW Exhibit 1. For purposes of consistency and clarity, the latter spelling will be used throughout the decision.

## FINDINGS OF FACT

1. The Complainant in this case is Peter Mordeczko, who resides at 2635 E. Schiller Street, Philadelphia, Pennsylvania 19134 (Service Address). Tr. 11.
2. The Respondent in this case is Philadelphia Gas Works.
3. On March 3, 2023, the Respondent sent the Complainant a 10-Day Shut Off Notice via U.S. Mail. Tr. 45; PGW Exh. 3.
4. On March 7 and 8, 2023, the Respondent attempted to contact the Complainant by telephone to inform him that his gas service would be terminated. Tr. 47-48; PGW Exh. 6.
5. The Complainant's gas service was terminated on April 19, 2023. Tr. 46; PGW Exh. 4.
6. The Complainant created a passcode for his account in 2003, before PGW created an internet-based customer portal. Tr. 56.
7. The Complainant is able to access information concerning his PGW account using his passcode by contacting a PGW customer service representative. Tr. 56.
8. Since 2003, the Complainant has accessed his account using his passcode by contacting a PGW customer service representative. Tr. 56.
9. Currently, PGW operates a customer portal which allows customers to access information concerning their accounts via the internet. Tr. 56-57.

10. Typically, customers use information such as a social security number or driver's license number to create an account on PGW's customer portal that may be used by the customer to access information concerning their PGW account. Tr. 57.

11. Mr. Mordeczko was unwilling to use his social security number or other private information to create an account he could use to access PGW's customer portal.

12. PGW developed an alternative procedure that allows the Complainant to create an account on PGW's customer portal without using his social security number. Tr. 57.

13. The Complainant was informed of the availability of the alternative procedure at the hearing.

14. The Complainant resides alone at the Service Address. Tr. 24.

15. The Complainant filed an Informal Complaint with the Commission requesting a payment arrangement on or about September 20, 2022; the case was assigned Bureau of Consumer Services (BCS) Case No. 3865830. Tr. 52; PGW Exh. 7.

16. When the Complainant filed the Informal Complaint in BCS Case No. 3865830, he was employed and had income. Tr. 53; Tr. 33.

17. The Determination issued on December 6, 2022, in BCS Case No. 3865830 awarded the Complainant a payment arrangement under which he was required to pay PGW a monthly amount consisting of \$138.00 budget billing plus \$283.00 on arrears, a total of \$421.00 for 24 months. Tr. 53; PGW Exh. 7.

18. The Commission-issued payment arrangement established by BCS in the BCS Case No. 3865830 was established without information concerning the Complainant's income because the Complainant refused to disclose that information to the Commission. Tr. 24, 53; Exh. 7.

19. The Complainant made no payments on the payment arrangement established in BCS Case No. 3865830, which defaulted on January 25, 2023. Tr. 23, 53; PGW Exh. 1, 7.

20. From August 2021 through September 5, 2023, the Complainant made just one payment on his account, a payment in the amount of \$1,091.20 made on August 9, 2021. Tr. 43-44; PGW Exh. 1.

21. The Complainant's current account balance is \$2,790.20. Tr. 43; PGW Exh. 1.

22. As of the date of the hearing, the Complainant was employed. Tr. 24-25.

23. The Complainant refused to disclose his current income. Tr. 25.

### 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, 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. Sub. 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 that is 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 his 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).

When completing the Complaint form, the Complainant checked two of the five boxes to describe the reason for the Complaint. More specifically, Mr. Mordeczko checked the boxes relating to termination of service and a payment arrangement; he did not check the box that refers to quality of utility service. Complaint ¶ 5. In an Attachment to the Complaint form, he also indicates that he “was and is still experiencing difficulties in accessing his account because of the social security number that is allegedly required by Philadelphia Gas Works to access his account.” Complaint Attachment at 1. Each of the three claims made by the Complainant will be discussed in turn.

#### Termination of Service without Proper Notice

Except in limited circumstances, Section 1406 of the Code requires notice to customers prior to termination of service. 66 Pa.C.S. § 1406. In general, written notice of

termination must be made at least ten days prior to the date of the proposed termination and the utility must attempt to contact the customer to provide notice of the proposed termination at least three days prior to the scheduled termination, either in person, by telephone or electronically. 66 Pa.C.S. § 1406 (b). Regarding, notification by telephone, the statute specifies “[p]hone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day[.]” 66 Pa.C.S. § 1406 (b)(1)(ii)(B).

Mr. Mordeczko argues that his gas service was terminated without proper notice. Tr. 26-27. In his testimony, he acknowledged that a shut-off notice was placed in this door on the date of termination and clarified that his complaint related to PGW’s failure to contact him prior to the date of termination. Tr. 27. In support of his testimony, he referred to a Data, Text and Talk log for his telephone issued by AT&T, which he had attached to the Complaint.<sup>4</sup>

In response to Mr. Mordeczko’s claim that PGW failed to contact him prior to the date of termination, Jessica Glace, a manager in PGW’s Customer Review Unit, testified that PGW sent a 10-day shut off notice to the Complainant on March 3, 2023. Tr. 45-46; PGW Exh. 3. She also testified that PGW tried to reach the Complainant by telephone on March 7, 2023 at 10:03 a.m. and March 8, 2023 at 6:53 p.m. Tr. 47-48; PGW Exh. 6. Ms. Glace testified that each call made by PGW’s telephone system to the Complainant’s telephone number of record detected a response by an answering machine. Tr. 47-48. Ms. Glace also explained that for customer privacy reasons, upon detection of an answering machine, the PGW system disconnects automatically, leaving no message. Tr. 48, 67-68. She further testified that when the PGW phone system automatically disconnects upon detection of an answering machine, no message is left for the customer; therefore, no usage would be recorded by the customer’s telephone. Tr. 51-52.

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<sup>4</sup> See attachment to Complaint entitled Data, text & talk logs dated 5/31/23. Tr. 49-50. The parties were informed that documents filed with the Commission prior to the hearing were not part of the record and were directed to send all exhibits entered into the record directly to the Court Reporter. Tr. 50, 76-78. Mr. Mordeczko acknowledged that he understood the instructions concerning the handling of exhibits to the Court Reporter. Tr. 78. At the hearing, the Complainant proposed that a certain AT&T call log identified as Complainant Exhibit 1 be entered into the record. The Respondent did not object and Complainant Exhibit 1 was entered into the record; however, Mr. Mordeczko failed to submit the AT&T log to the Court Reporter for inclusion in the record.

The Complainant's testimony in this case reflects his perception of the circumstances surrounding the termination of service. However, mere opinion, without more, is insufficient to meet the Complainant's burden and bald assertions, personal opinions or perceptions do not constitute evidence. *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered Jan. 12, 2012) (citing *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)). Conversely, PGW provided testimony and documentary evidence that it provided the Complainant with the required statutory notice of the impending termination of service.

As noted above, subsection 1406 (b)(1)(ii)(B) of the Code requires that a utility attempt to contact the customer by telephone prior to termination of service; actual contact with the customer is not required. Ms. Glace's testimony and the evidence presented by PGW in support of her testimony are both credible and convincing. As a result, I find that the Complainant failed to meet the burden of proving that PGW failed to provide proper notice of the impending termination of gas service. Thus, I conclude that no violation of the Code's provisions governing termination of service occurred. 66 Pa.C.S. §1406.

#### Unreasonable Service

Section 1501 of the Code, mandates that a public utility must furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and must make such repairs, changes, alterations, substitutions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons and the public. 66 Pa.C.S. §1501.

The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984). Further, in *Re Metropolitan Edison Co.*, 80 Pa.P.U.C. 663, 672 (1993), the Commission stated that a utility is not mandated to furnish perfect service:

[Section 1501] does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.

66 Pa.C.S. § 1501.

Thus, the test to determine the adequacy of a utility's service and facilities is that of reasonableness. *See Thurby v. West Penn Power*, C-2011-2254048 (Order Apr. 4, 2013) (*Thurby*); *Bertsch v. PPL Elec. Utils. Corp.*, C-2011-2251784 (Final Order Apr. 2, 2012); *Scherich v. Verizon Pa. Inc.*, Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order Jan. 28, 2010). This is also the test to determine the adequacy of a utility's response to customer service complaints, as well as repairs made to its facilities. *Thurby*.

In the Complaint and in his testimony, the Complainant contended that his inability to access his PGW account dated back to 2003, when he requested that the account be put in his name. Tr. 27-29; Complaint Attachment at 1; Tr, 28-30. He also testified that when the account was put in his name, he "put the password on it." Tr. 28.

In testimony, he testified that typically, he paid his gas bill by credit or debit card. Tr. 29, 38. He argued that he was unable to pay his gas bill because PGW had closed its office in downtown Philadelphia and/or because he could not access his account to do so via telephone. Tr. 29. When questioned by PGW counsel, he acknowledged that he had never tried to pay his bill in cash. Tr. 41.

In response, PGW's witness explained that PGW customers may pay their bills in cash at a number of retail locations. Tr. 45; PGW Exh. 2. She also explained that PGW did not have an on-line customer portal in 2003. Tr. 56. She testified that PGW has established and now operates a customer portal. Customers may create an account on the portal that provides direct access to their PGW account. Tr. 57. Through her testimony, Ms. Glace clarified that Mr. Mordeczko's issue did not relate to access to his PGW account itself; instead, it concerned PGW's policy and standard procedures for creating an account on PGW's customer portal. Tr. 57, 59-60.

She testified that the standard procedure for creating an account on PGW's customer portal requires entry of the customer's social security or driver's license number. Tr. 57. Ms. Glace testified that PGW was aware of the sensitive nature of the information necessary to establish an account on PGW's customer portal and the use of sensitive information to create an account was intended to protect customer account information and prevent unauthorized access to such data. Further, she testified that because Mr. Mordeczko was unwilling to use his social security or driver's license number to create an account on PGW's customer portal, PGW had developed an alternative procedure that would allow him to create an account on PGW's customer portal without using his social security or driver's license number.<sup>5</sup> Tr. 57. Mr. Mordeczko was informed of the availability of the alternative procedure at the hearing.

Testimony provided by the Complainant at the hearing tends to support PGW's position. During his testimony, he acknowledged that at various times between 2003 and 2023 he had been able to pay his bill and access information concerning his account using his passcode but that he found it "a rigmarole, big production" because he had to do so by contacting PGW customer service. Tr. 29, 36-41. In addition, Mr. Mordeczko also provided extensive testimony concerning his unwillingness to share any of his personal information such as a social security number, PINs, passwords and so forth with PGW. Tr. 15, 28.

Thus, PGW's standard procedure for creating an account on its customer portal does not appear to be unreasonable. PGW's willingness to accommodate Mr. Mordeczko's sensitivity to using personal information to create an account on PGW's customer portal demonstrates that PGW has been responsive to his concerns. In light of the above, I conclude that the Complainant has failed to meet his burden of proving that PGW's customer service was unreasonable or violated any provision of the Code or any Commission rule, regulation or policy.

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<sup>5</sup> The Complainant's testimony focused on his unwillingness to use his social security number to create an account. It is unclear why he was unwilling to use his driver's license number to create an account on PGW's portal. During his testimony, he conceded that he had used his driver's license to establish his identity when dealing with PGW customer service representatives in person at PGW's offices in downtown Philadelphia. Tr. 28.

## Request for a Commission-Issued Payment Arrangement

The Complainant resides at the Service Address alone. Tr. 24. He was awarded a Commission-issued payment arrangement under BCS Determination No. 3865830 on December 6, 2022, which provided for \$138.00 budget billing plus \$283.00 on the arrears, a total of \$421.00 monthly. Tr. 53; PGW Exh. 7 and 8. The Complainant did not make any payments on the payment arrangement, which defaulted when the first payment due in January 2023 was not made. Tr. 53; PGW Exh. 2, 7.

The Complainant last made a payment on his account on August 9, 2021, in the amount of \$1,091.20. PGW Exh. 1. The Complainant's current account balance is \$2,790.92. Tr. 43; PGW Exh. 1.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, (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. 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, 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).

In testimony, the Complainant provided information concerning his employment history, indicating that in October 2022, when he first requested a payment arrangement, he was employed and that he became unemployed later that same month. Tr. 33. He also testified that when he filed his informal complaint in April 2023, he was still unemployed. Tr. 34. In addition, he testified that he had found employment in August 2023. Tr. 33. Finally, the Complainant confirmed that the Commission-issued payment arrangement was established without disclosure of any information of his income. Tr. 34.

At the hearing, the Complainant again declined to provide his income or rate of pay, nor did he provide any information about his employment such as his employer's name or his job title. Tr. 25. Although the Complainant testified that he has experienced periods of employment and unemployment since December 6, 2022, when the Commission-issued payment arrangement was issued, the record is void of evidence of the Complainant's income then or now.

The Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. *See* 66 Pa.C.S. § 1405(d). 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. Here, it is undisputed that the Complainant was awarded with a Commission-issued payment arrangement in December 2022 and that he defaulted on that payment arrangement. He has failed to demonstrate a decrease in income since the December 2022 payment arrangement was awarded. Accordingly, the Complainant's request for a payment arrangement must be denied.

#### CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant.

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. The Code does not mandate perfect service, nor must a public utility provide the best possible service; a public utility is not a guarantor of either perfect service or the best possible service. 66 Pa.C.S. § 1501. *Re Metro. Edison Co.*, 80 Pa.P.U.C. 663 (1993).

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. Complainant has failed to sustain his burden of proof. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. Respondent's Exhibits 1 - 8 are entered into the record.

