

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pamela Bull	:	
	:	
v.	:	C-2023-3042007
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision sustains the Formal Complaint of a gas service customer because she has met her burden of proving she is eligible for a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On July 25, 2023,¹ Pamela Bull (Complainant or Ms. Bull) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent).² Ms. Bull checked the box on the

¹ The Complaint is dated July 20, 2023. The Commission received the Complaint on July 25, 2023.

² As discussed below, the Complaint will be treated as a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3916335. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

I note that this matter is not docketed as an appeal from the BCS decision. Also, instead of filing a notice of appeal within 20 days, it seems the Complaint was filed more than 20 days after the BCS decision (6/12/2023), which raises the issue of timeliness. However, the Complaint was filed within the fifty days Complainant would have had to file the Complaint, had she filed the Notice of Appeal within twenty days under 56

Complaint form marked “Other.” Next to “Other,” Complainant wrote that she is requesting “[a] payment agreement of \$136.00 a month. That is all I can afford. Disabled.” She further explained under the heading “Requested Relief,” “The amount the PUC chose was to [sic] high a month for me to pay[.] And I never received that info by mail either. I am willing to pay \$136.00 a month. Which was my previous payment amount agreement.” Compl. ¶ 6.

On August 22, 2023, PGW filed its Answer to the Formal Complaint which admitted in part and denied in part various material allegations of the Complaint. PGW requested the Complaint be dismissed.

By Hearing Notice dated August 28, 2023, an Initial Call-In Telephonic Hearing was scheduled for October 24, 2023, at 10:00 a.m., and the matter was assigned to me.

A Prehearing Order was issued on September 25, 2023, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On October 24, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Anita J. Murray, Esquire, appeared on behalf of PGW and presented the testimony of one witness, Ronda Cobb, a customer review officer for PGW. Ms. Cobb sponsored the following three exhibits, which were admitted into the record:

PGW Exhibit 1 – Statement of Account

PGW Exhibit 2 – Payment Agreement History

PGW Exhibit 3 – Opening and Closing of BCS 3916335

Pa. Code § 56.172. *See Ruskey v. Pa. Elec. Co.*, Docket No. C-2018-3003153 (Opinion and order entered Mar. 13, 2019). Also, based on the statement in the Complaint that Complainant did not receive the BCS info in the mail and the fact that PGW understood this matter to be an appeal of the BCS decision, I will treat this as if it were a timely appeal of the BCS decision, *nunc pro tunc*. *See* Compl. ¶ 6; Answer ¶ 5.

The record closed on November 8, 2023, upon the filing of the 43-page transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Pamela Bull, who resides at 4309 Brown Street, Philadelphia, Pennsylvania 19104 (Service Address). Tr. 8.
2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides gas service to Complainant at the Service Address. Tr. 8.
3. Complainant has a total household size of two at the Service Address. Tr. 10-12, 16.
4. Complainant's gross monthly household income is \$3,844.³ Tr. 11, 14-16.
5. Complainant's income and household size places her between 150% and 250% of the Federal poverty level.⁴
6. Complainant's total arrearage at the time of the hearing was \$2,871.21. Tr. 26-28; PGW Ex. 1.
7. Complainant has not been issued a prior a Commission-issued payment arrangement. PGW Ex. 2; Tr. 29-30.

³ Complainant testified that she earns a monthly income of \$3,621 from service-connected disability and \$223 from the Social Security Office. Tr. 11, 14-16.

⁴ See, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx> .

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.

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 Public Utility Code (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.

66 Pa.C.S. § 1405(a)-(b). 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. Ms. Bull resides in her home with her daughter. Tr. 10-12, 16. Ms. Bull's gross monthly household income of \$3,844 for a household size of two places her between 150% and 250% of the Federal poverty level.⁵ Further, Ms. Bull has not been granted a prior Commission-issued payment arrangement. Therefore, pursuant to the Code, Ms. Bull is eligible for a three-year payment arrangement under 66 Pa.C.S. § 1405(b)(2).

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. Complainant has met her burden of proving that she is eligible for a Commission issued payment arrangement under 66 Pa.C.S. § 1405. 66 Pa.C.S. § 332(a).

⁵ See, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx> .

6. Complainant is eligible for a three-year payment arrangement on her arrears. 66 Pa.C.S. § 1405(b)(2).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Pamela Bull in Pamela Bull v. Philadelphia Gas Works at Docket No. C-2023-3042007 is sustained.

2. That, Pamela Bull shall make monthly payments consisting of her current budget bill plus one-thirty-sixth ($1/36^{\text{th}}$) of the arrearage owed on the account, beginning with the first billing due date following the entry of the Commission's Final Order in this case, and continuing thereafter on the due date for the payment of each regular monthly bill.

3. That as long as Pamela Bull maintains the terms of the payment arrangement stated herein, Philadelphia Gas Works shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.

4. That, if Pamela Bull does not keep the payment schedule stated herein, Philadelphia Gas Works is authorized to suspend or terminate her utility service in accordance with the Public Utility Code and Commission Regulations.

5. That Docket No. C-2023-3042007 be marked closed.

Date: January 31, 2024

/s/
Michael J. Mroczka
Special Agent