

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Traci Green	:	
	:	
v.	:	C-2023-3043377
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision awards the Complainant a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 29, 2023, Traci Green (Complainant or Ms. Green) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (Respondent or PGW). In the Complaint, Ms. Green states that PGW is threatening to shut off her service or has shut it off and that she would like a payment arrangement.

On October 24, 2023, Respondent filed an Answer stating that PGW issued a ten-day shut off notice on July 27, 2023, and shut off the Complainant's service on August 29, 2023.¹

¹ The Complaint was served on PGW on October 3, 2023.

A Hearing Notice dated November 1, 2023, advised the parties that a telephonic initial hearing was scheduled for December 21, 2023, at 10:00 a.m. A Prehearing Order was issued on November 1, 2023, reminding the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The telephonic initial hearing convened as scheduled. Ms. Green appeared *pro se* and testified in support of her Complaint. Anita J. Murray, Esq., represented the Respondent, and presented the testimony of Jessica Antonetti, a Customer Review Officer at PGW. The Respondent introduced nine exhibits, all of which were admitted into the record.

The record in this matter closed on January 17, 2024, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Traci Green , a PGW customer at 7973 Temple Road, Philadelphia, PA 19150 (Service Address). Tr. 12.
2. The Respondent is Philadelphia Gas Works.
3. At the time of the hearing, the Complainant had a balance with PGW of \$2,543.63. PGW Exhibit 1; Tr. 25.
4. To restore gas service, PGW is seeking payment of \$2,796.86, consisting of (a) the full outstanding balance on the Complainant's account \$2,543.63, (b) a \$123.23 reconnection fee, and (c) \$130, being half of a \$260 security deposit. Tr. 41-42.
5. The Complainant's outstanding balance accrued as a consequence of her separation from her husband sometime after March 1, 2022.

6. Upon their separation, the Complainant and her husband agreed to share the cost of utilities, with the Complainant paying the electric bill and her husband paying the gas bill. Tr. 37-38.

7. Although the PGW bills were sent to her at her home, the Complainant was unaware that her husband was not paying PGW bills because “the gas was still on.” Tr. 37-38.

8. During the period March 1, 2022, through September 28, 2023, Ms. Green made two payments to PGW totaling over \$400 dollars to reduce the outstanding balance of her PGW bill. (PGW Exhibit 1). Tr. 32; PGW Exhibit 1.

9. On July 27, 2023, PGW issued a 10-day Shut Off Notice to the Complainant advising that gas service would be terminated on or after August 8, 2023, unless action was taken to prevent the termination. Tr. 25; PGW Exhibit 2.

10. On August 3, 2023, the Complainant contacted PGW and requested a payment arrangement to avoid termination of her gas service. Tr. 27; PGW Exhibit 4.

11. The Complainant was informed that she could avoid termination by paying a catch-up amount of \$768.00 and a monthly payment of \$256.00. Tr. 27; PGW Exhibit 4.

12. The Complainant told a PGW representative that she could not pay a catch-up amount of \$768.00 and a monthly payment of \$256.00. Tr. 27; PGW Exhibit 4.

13. On August 2, 2023, PGW advised the Complainant that she could apply for PGW’s Customer Responsibility Program (CRP). Tr. 27; PGW Exhibit 4.

14. The Complainant promptly submitted a CRP application. Tr. 12-13, 27-28; PGW Exhibit 5.

15. On August 8, 2023, PGW issued a CRP denial letter informing the Complainant that she was ineligible for CRP assistance. PGW Exhibit 6.

16. The Complainant misunderstood the information provided in the August 8, 2023 denial letter and believed that she would receive a no money down payment arrangement with her next bill. Tr. 13; PGW Exhibit 6.

17. PGW terminated the Complainant's gas service on August 29, 2023. Tr. 25.

18. The Complainant was issued and defaulted upon two PGW-issued payment arrangements. Tr. 31; PGW Exhibit 8.

19. The Complainant has a three-person household consisting of two adults and one child. Tr. 19.

20. The annual gross income of the Complainant's household is approximately \$84,800.00. Tr. 16-19, 22.

DISCUSSION

The Responsible Utility Customer Protection Act (Chapter 14) authorizes the Commission to establish payment arrangements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a). The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). Therefore, in this case, the Complainant has the burden of proving that she is entitled to a Commission-issued payment arrangement.

“Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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, a complainant will prevail. If the utility rebuts complainant's evidence, the burden of going forward with the evidence shifts back to a 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 a complainant. *Replogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980); *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

If Respondent submits evidence of “co-equal” weight to refute Complainant's evidence, Complainant has not satisfied the burden of proof unless it presents additional evidence opposing Respondent's evidence; *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*. 461 A.2d 1234.

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. Comm., Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the party (initially, this will usually be the complainant, applicant, or petitioner, as the case may be) with the burden of production fails to introduce sufficient evidence the opposing party is entitled to receive a favorable ruling. That is, the opposing party

would be entitled to a compulsory nonsuit, a directed verdict, or a judgment notwithstanding the verdict. Once the party with the initial burden of production introduces sufficient evidence to make out a prima facie case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to his position. The burden of production goes to the legal sufficiency of a party's case.

Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his favor. “[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.” *Riedel v. Cnty. of Allegheny*, 633 A.2d 1325; 1328 n. 11 (Pa. Cmwlth. 1993). The burden of persuasion, usually placed on the complainant, applicant, or petitioner², determines which party must produce sufficient evidence to meet the applicable standard of proof. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

In her testimony, Ms. Green indicated that PGW had turned off her gas service and that she was seeking a payment arrangement. Tr. 12-14. To restore gas service, PGW is seeking payment of \$2,796.86, consisting of (a) the full outstanding balance on the Complainant's account \$2,543.63, (b) a \$123.23 reconnection fee, and (c) \$130, being half of a \$260 security deposit. Tr. 41-42. The Complainant offered no testimony or evidence relating to the termination of gas service by PGW.

Section 1407(c) of the Public Utility Code provides that a utility *may* require full payment before restoration of service. Title 66 Pa.C.S. § 1407(c). However, 1407(c) does not “divest the Commission of its duty to act as the final arbiter of a utility consumer's rights with respect to payment disputes.” *Crawford v. Nat'l Fuel Gas Dist. Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007) (*Crawford*). The Commission retains “the authority under Section 1405 of the [Public Utility] Code to establish a payment agreement for a customer

² See, 66 Pa.C.S.A. §§ 332(a), 315.

who was lawfully disconnected for nonpayment.” *Rogito v. UGI Utils., Inc.*, Docket No. F-02263457 (Opinion and Order entered Dec. 3, 2008).

Section 1405 of the Code allows the Commission to establish a payment arrangement and provides, in pertinent part, 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).

While the Commission has the authority to establish a payment agreement when a utility has lawfully terminated a customer for nonpayment, the Commission exercises this authority very judiciously. The Commission has stated that it will not issue a payment agreement to a customer when the record demonstrates a lack of good faith effort on the part of the customer to pay her utility bills and there was no evidence that the customer experienced a significant change in circumstances which were outside of the customer's control. *Crawford*, at 15-16. The Complainant's payment history and good faith effort in meeting payment obligations should be considered, including the customer's inability or unwillingness to comply with payment arrangements established by the utility. See *Getz v. Metro. Edison Co.*, Docket No. C-2014-2459964 (Final Order entered May 28, 2015); *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

At the hearing, the Complainant did not contest the amount requested by PGW to restore her service nor did she contest the evidence presented by PGW that only two payments were made on the Complainant's account during the period from March 1, 2022 through September 28, 2023.

Rather, the Complainant testified that the outstanding balance accrued as a consequence of her husband's failure to pay the household gas bill before and after her separation from her husband in February or March 2023. The Complainant testified that she "never looked at [the gas bills]. I just hand him the bill . . . and that's what he was supposed to be paying." Tr. 38. She testified that she "never looked at the bills until after he left . . . in February, March [2023]." Tr. 38. Ms. Green acknowledged that the household gas bills were sent to her at her home but contends that she was unaware that her husband was not paying PGW bills because "the gas was still on." Tr. 37-38. In testimony, Ms. Green indicated that she discovered that the gas bill was not being paid in August or September 2023, when she happened to look at a gas bill. Tr. 38. However, she also testified that she applied for payment arrangements but was unsure of the date of those applications. Tr. 39. She further testified that she, not her husband, made the payments to PGW in March and May 2023. Tr. 39-40. Consequently, it is unclear from the record when Ms. Green first discovered that the bills were not being paid.

PGW presented testimony and records demonstrating that from September 28, 2021 through December 14, 2023, only two payments were made on the Complainant's account. PGW also demonstrated that the payment arrangements made on the Complainant's account in March 2023 and May 2023 were broken. Tr. 31-33; PGW Exhibit 8.

While the payment history for the Complainant's account suggests an unwillingness or inability to pay, it appears that the Complainant is now sincerely interested in paying her PGW bill. PGW records confirm that two payments made in March and May 2023 totaling over \$400 dollars were made on the Complainant's account. This supports a finding that at that time, the Complainant was attempting to make a good faith effort to pay her PGW bill.³ PGW Exhibit 1. In addition, the Complainant credibly testified, and PGW exhibits confirmed, that shortly after receiving the shut-off notice, the Complainant promptly contacted PGW to avert termination of service. Tr. 27; PGW Exhibit 4.

PGW records also demonstrate that when Ms. Green called PGW on August 2, 2023, PGW told her that she could apply for PGW's CRP. Tr. 27; PGW Exhibit 4. The Complainant promptly submitted a CRP application; however, she was found ineligible for the program and her service was shut off on August 29, 2023. Tr. 25. In addition, I note Ms. Green's testimony that she misunderstood the information provided in PGW's August 8, 2023, CRP denial letter and believed that she would receive a no money down payment arrangement with her next bill.⁴ Tr. 13; PGW Exhibit 6.

Given the Complainant's recent good faith effort to pay PGW beginning in the Spring of 2023, her confusion regarding the state of her account and shut off, and that she has not

³ The Complainant, who is the primary source of household income, testified that her adult son was unemployed and in poor health. Tr. 19.

⁴ Ms. Green made the same allegation in the Complaint. Complaint ¶7. The contested portion of the letter reads as follows: "If you were enrolled in CRP, you have been removed. You are now on a no money down payment arrangement. The terms of your new arrangement will be on your next bill, or you can call us . . . for an overview." PGW's witness testified that Ms. Green had never been enrolled in PGW's CRP. Tr. 36.

defaulted on a Commission-issued payment arrangement, a Commission payment arrangement will be awarded here.

The federal poverty level for a family of three is \$24,860.⁵ Complainant's annual gross income is approximately \$84,800, which is more than 300% of the federal poverty level.⁶ Therefore, the Complainant may be awarded a 6-month, payment arrangement. 66 Pa.C.S. § 1405(b)(4). Based on her outstanding balance of \$2,543.63, this would require a monthly payment of approximately \$423.94 towards her outstanding balance plus payment for monthly usage. In addition, Ms. Green would be responsible for reconnection fees and any security deposit required by PGW to reconnect service.

The Complainant provided no testimony or evidence to demonstrate that the termination of her gas service was improper.

CONCLUSIONS OF LAW

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

2. The Commission is authorized to establish payment agreements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a).

⁵ See Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>.

⁶ The Complainant testified that she earns \$38.00 per hour and works 40 hours per week, excluding overtime, or \$1,520 per week x 52 weeks = \$79,040. In addition, the Complainant's husband pays \$500 monthly for tuition and approximately \$140 monthly after school care, which amount to \$5,760 for a 9-month academic year. Combining wages and other income provides an estimated annual income of \$84,800. The estimate is conservative because it excludes overtime pay earned by the Complainant. In testimony, Complainant indicated that overtime is sometimes mandatory. For example, she testified that during the month of November 2023, she worked a total of 56 hours of overtime. At her regular rate of pay, that would yield an additional \$2,128 in income for the Complainant.

3. Based on her household size and gross household annual income, the Complainant is eligible for a 6-month payment arrangement on the outstanding accrued balance for her account. 66 Pa.C.S. § 1405(b)(4).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Traci Green in Traci Green v. Philadelphia Gas Works at Docket No. C-2023-3043377 is sustained.

2. That, after entry of the Commission's Final Order in this case, Philadelphia Gas Works shall reconnect Complainant's gas service within 72 hours of payment of any reconnection fee Philadelphia Gas Works may assess, pursuant to 66 Pa.C.S. § 1407(a), if PGW so requires.

3. That, Traci Green shall make monthly payments consisting of her current budget bill plus one-sixth (1/6th) of the arrearage owed on the account, commencing 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.

4. That as long as Traci Green 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.

5. That, if Traci Green 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.

6. That Docket No. C-2023-3043377 be marked closed.

Date: April 12, 2024

/s/
Arlene Ashton
Administrative Law Judge