

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brandy Martinez	:	
	:	
v.	:	C-2023-3043844
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint filed by Brandy Martinez against Philadelphia Gas Works because Philadelphia Gas Works acted in accordance with Commission regulations by requiring full payment of the Complainant’s unpaid outstanding balance before it will restore her gas service, and because the Complainant is not eligible for another Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On October 26, 2023, Brandy Martinez (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.” Under the “requested relief” section of the Complaint form, the Complainant indicated that she is looking to have her service restored with a payment arrangement.

On November 15, 2023, the Respondent filed an Answer admitting that it terminated the gas service to 1810 N. 28th Street, Philadelphia, PA (service address) on May 31, 2023 due to non-payment. The Respondent indicated that the Complainant has received multiple PGW-issued payment agreements that remain unsatisfied as well as two Commission-issued payment agreements that remain unsatisfied.

By Hearing Notice dated November 16, 2023, an Initial Call-In Telephonic Hearing was scheduled for January 18, 2024, at 10:00 a.m. and the matter was assigned to me.

I issued a Prehearing Order on November 28, 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.

On December 18, 2023, Anita Murray, Esquire entered her appearance in this matter on behalf of PGW.

The hearing convened as scheduled on January 18, 2024. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Ms. Murray, who presented the testimony of Patricia Bernard, a PGW Customer Review Officer. The Respondent submitted three exhibits, all of which were admitted into the record.

The record closed on January 22, 2024, the date the transcript was filed with the Commission.¹

¹ Although the Court Reporting Agency filed a transcript with the Commission on January 22, 2024, it did not include a complete Index To Witnesses on page 2. The Court Reporting Agency filed a second copy of that transcript with the Commission on February 9, 2024 which included a complete Index To Witnesses.

FINDINGS OF FACT

1. The Complainant in this case is Brandy Martinez.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant currently resides at 1810 North 28th Street in Philadelphia (service address). Tr. 8.
4. The Complainant previously had PGW gas service at 6137 Spruce Street in Philadelphia. Tr. 30; PGW Exh. 1.
5. The Complainant left an unpaid balance of \$1,589.52 at the Spruce Street address. Tr. 43; PGW Exh. 1.
6. On May 31, 2023, PGW terminated the Complainant's gas service at the service address for non-payment. Tr. 9-11, 31.
7. PGW issued the Complainant a termination notice prior to termination. Tr. 9.
8. PGW's termination notice advised the Complainant of the reason for termination as well as steps she could follow to avoid termination. Tr. 9.
9. The Complainant's service has not since been restored. Tr. 10.
10. The Complainant has received four Company-issued payment arrangements. Tr. 33; PGW Exh. 2.²

² Although the transcript reflects that PGW's witness testified that the Complainant has received three company-issued payment arrangements (Tr. 33), PGW Exh. 2 demonstrates that the Complainant has received four company-issued payment arrangements.

11. The Complainant defaulted on each of these Company-issued payment arrangements. Tr. 33; PGW Exh. 2.

12. The Complainant has received two Commission-issued payment arrangements. Tr. 12, 34; PGW Exh. 2.

13. On March 2, 2022, the Commission's Bureau of Consumer Services (BCS) granted the Complainant a payment arrangement requiring her to pay PGW \$437 per month, consisting of budget billing of \$134 plus \$303 towards her arrears. Tr. 36; PGW Exh. 3.

14. At the time BCS awarded the March 2, 2022 payment arrangement, the Complainant's household consisted of two adults and two children. Tr. 35; PGW Exh. 3.

15. At the time BCS awarded the March 2, 2022 payment arrangement, the Complainant's gross monthly household income totaled \$7,413.33. Tr. 36; PGW Exh. 3.

16. The Complainant defaulted on the March 2, 2022 Commission-issued payment arrangement. Tr. 34; PGW Exh. 2.

17. On October 18, 2022, the Commission's BCS granted the Complainant a second payment arrangement due to a significant change in circumstances. Tr. 38; PGW Exh. 3.

18. At the time BCS awarded the October 18, 2022 payment arrangement, the Complainant's household consisted of two adults and two children. PGW Exh. 3

19. At the time BCS awarded the October 18, 2022 payment arrangement, the Complainant's gross monthly household income totaled \$4,983.33. PGW Exh. 3.

20. Pursuant to the October 18, 2022 Commission-issued payment arrangement, the Complainant was required to pay PGW \$198 per month, consisting of a budget of \$147 plus \$51 towards her arrears. Tr. 38; PGW Exh. 3.

21. The Complainant defaulted on the October 18, 2022 Commission-issued payment arrangement. Tr. 34, 38; PGW Exh. 2.

22. The Complainant currently earns an annual income as a Human Resources representative with GSA of \$99,952, or gross monthly income of \$8,329.33.³ Tr. 19.

23. The Complainant also earns approximately \$600 per month styling hair. Tr. 19-20.

24. The Complainant's final balance owed to PGW is \$3,872.86. Tr. 30-31; PGW Exh. 1.

25. The Complainant's outstanding balance is comprised of the final balance of \$2,283.34 for service at the service address and the final balance of \$1,589.52 for service at 6137 Spruce Street in Philadelphia. Tr. 43; PGW Exh. 1.

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. 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

³ \$99,952/12 months = \$8,329.33.

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. 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. 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).

The Complainant testified that PGW terminated her gas service in May 2023 for non-payment. The Complainant acknowledged that she was not paying her bill. Tr. 11. The Complainant indicated that she is seeking restoration of service and an affordable payment arrangement.

Restoration of Service

The Complainant does not dispute that she was not paying her bill, nor did she challenge PGW's decision to terminate her service for non-payment. Instead, she is just seeking an affordable payment arrangement and restoration of service.

Regarding payment to restore service, Commission regulations provide in pertinent part that “[a] public utility may require . . . [f]ull payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment arrangements.” 52 Pa. Code § 56.191(c)(2)(i).

The Complainant’s gross annual income of \$99,952, or gross monthly income of \$8,329.33 for a four-person household, is greater than 300% of the Federal poverty level.⁴ Accordingly, PGW acted in accordance with Commission regulations by requiring full payment of the Complainant’s outstanding balance before it will restore service.

Payment Arrangement

The Complainant also requested another Commission-issued payment arrangement. 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:

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.

⁴ See, Federal Register, 89 FR 2961, at 2961-2963 (January 17, 2024).

(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 a second 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 October 18, 2022 Commission-issued payment arrangement, the record reflects that the Complainant's four-person household's gross monthly income was \$4,983.33 when she received that payment arrangement. PGW Exh. 3. The record further reflects that the Complainant's household is still a four-person household, but her gross monthly income from her employment has increased to approximately \$8,929.33. Tr. 19. Since the Complainant's gross monthly income has actually increased since the October 18, 2022 Commission-issued payment arrangement, 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 another Commission-issued payment arrangement.

Moreover, the Complainant did not present any evidence to indicate that she has experienced a significant change in circumstances as defined under 66 Pa.C.S. § 1403 that caused her to default on the October 18, 2022 Commission-issued payment arrangement. According to the Complainant's own testimony, the reason she defaulted was that she could not afford the bill. Tr. 13. Since the Complainant did not default on her October 18, 2022 Commission-issued payment arrangement due to a significant change in circumstances, I cannot conclude that she is entitled to an extension of her previous Commission-issued payment arrangement under 66 Pa.C.S. § 1405(e).

Accordingly, the Complainant's request for another Commission-issued payment arrangement, or an extension of her previous Commission-issued payment arrangement, is denied, and the Complainant's Complaint is denied in its entirety.

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. Commission regulations provide in pertinent part that “[a] public utility may require . . . [f]ull payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment arrangements.” 52 Pa. Code § 56.191(c)(2)(i).

5. PGW acted in accordance with Commission regulations by requiring full payment of the Complainant's unpaid outstanding balance before it will restore her gas service. 52 Pa.Code § 56.191(c)(2)(i).

6. 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).

7. “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.

8. 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).

9. "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.

10. Complainant failed to sustain her burden of demonstrating that she should receive a second Commission-issued payment arrangement or an extension of her previous payment arrangement. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Brandy Martinez at Brandy Martinez v. Philadelphia Gas Works at Docket No. C-2023-3043844 is denied;

2. That the Formal Complaint at Docket No. C-2023-3043844 be marked closed.

Date: April 22, 2024

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