

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawn Johnson	:	
	:	
v.	:	C-2023-3044091
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Formal Complaint because he failed to establish that he is entitled to a payment arrangement.

HISTORY OF THE PROCEEDING

On November 2, 2023, Shawn Johnson (Complainant or Mr. Johnson) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant requested a payment arrangement.

On November 27, 2023¹, Respondent filed an Answer denying the material allegations of the Complaint.

¹ The Complaint was served on the Respondent by the Secretary’s Bureau on November 6, 2023.

On December 1, 2023, a Hearing Notice was issued which indicated an initial hearing was scheduled in the matter for January 24, 2023, at 10:00 a.m., and assigned to me. I issued a Prehearing Order on January 9, 2024.

The hearing took place as scheduled on January 24, 2024. The Complainant was *pro se* and presented his testimony at the hearing. PGW was present and represented by Anita Murray, Esq. who presented the testimony of one witness, David Kauffman, a Customer Review Officer. The Respondent offered three exhibits at the hearing, which were entered into the record at that time.

The hearing resulted in a 40-page transcript. The record closed on February 16, 2024, when I received the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Shawn Johnson, who resides at 3818 North 19th, Philadelphia, Pennsylvania 19140 (Service Address). Tr. 7-8.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant resides at the Service Address alone. Tr. 12.
4. The Complainant is employed full-time. Tr. 13.
5. The Complainant receives approximately \$20 per hour from his job. Tr. 13.
6. The Complainant works approximately 50 hours per week. Tr. 14.

7. The Complainant's income of \$4,333.33 per month² for a household of one is 345% of the Federal Poverty guidelines.³

8. Between October 27, 2021, and January 16, 2024, the Complainant made eight payments to his account with PGW. Tr. 30-31; PGW Exh. 1.

9. The Complainant has had three Company-issued payment arrangements which he failed to complete. Tr. 31-32; PGW Exh. 2.

10. On September 27, 2019, the Complainant received a Commission-issued payment arrangement from Bureau of Consumer Services (BCS) Case No. 3731967 based on a household of two with a monthly income of \$1,083.33. Tr. 32,34; PGW Exhs. 2, 3.

11. The Complainant received a Level One payment arrangement made up of \$81.00 budget billing and \$15.00 monthly repayment. Tr. 35; PGW Exh. 3.

12. The Complainant broke the Commission-issued payment arrangement due to non-payment. Tr. 35; PGW Exh. 2.

13. The Complainant's account balance as of the hearing date was \$5,303.88 which consists of unpaid bills and late payment charges. Tr. 30; 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).

² \$20 x 50 = \$1000.00 x 52 = \$52,000.00 / 12 = \$4,333.33.

³ See Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>.

To establish a sufficient case and satisfy the burden of proof, the 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, 602 (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 Compensation Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. 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), *aff'd*, 461 A.2d 1234 (Pa. 1983).

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).

Request for Payment Arrangement

The Complainant requests a payment arrangement for his outstanding balance. 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). Under Section 1403 of the Public Utility Code, 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. 66 Pa.C.S. § 1403.

The Complainant resides at the Service Address alone. Tr. 12. The Complainant is employed full-time. Tr. 13. The Complainant receives approximately \$20 per hour from his job. Tr. 13. The Complainant works approximately 50 hours per week. Tr. 14. The Complainant’s monthly income of \$4,333.33 per month for a household of one is 345% of the Federal Poverty guidelines.

Between October 27, 2021 and January 16, 2024, the Complainant made eight payments to his account with PGW. Tr. 30-31; PGW Exh. 1. The Complainant has had three Company-issued payment arrangements which were broken due to non-payment. Tr. 31-32; PGW Exh. 2. On September 27, 2019, the Complainant received a Commission-issued payment arrangement from BCS at Case No. 3731967 based on a household of two with a monthly income of \$1,083.33. Tr. 32,34; PGW Exhs. 2, 3. The Complainant received a Level One

payment arrangement made up of \$81.00 budget billing and \$15.00 monthly repayment. Tr. 35; PGW Exh. 3. The Complainant broke the Commission-issued payment arrangement due to non-payment. Tr. 35; PGW Exh. 2. The Complainant's account balance as of the hearing date was \$5,303.88 which consists of unpaid bills and late payment charges. Tr. 30; PGW Exh. 1.

In this matter, 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). The Complainant failed to demonstrate a change in income as defined by 66 Pa.C.S. §1403 since he was provided with a Commission issued payment arrangement in September 2019. In fact, the Complainant's monthly income has increased since the last payment arrangement. As such, 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. 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. 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.
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

