

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donovan Jacob Adams :  
 : C-2023-3043707  
 v. :  
 :  
 Philadelphia Gas Works :

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses Donovan Jacob Adams’ Formal Complaint as he was not able to meet his burden of establishing that he is entitled to a second Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On October 19, 2023, Donovan Jacob Adams (Mr. Adams or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) alleging that the utility is threatening to shut off or has already shut off his gas service; that he is unable to pay his outstanding balance with PGW, and that there are incorrect charges in his gas bills from PGW. As relief, the Complainant requests that the Commission establish an affordable payment arrangement on his behalf.

On November 13, 2023, PGW filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated November 15, 2023, a telephonic hearing was scheduled for January 12, 2024.

On December 13, 2023, I issued a Prehearing Order.

On January 5, 2024, counsel for PGW filed a Motion requesting the continuance of the hearing scheduled for January 12, 2024, in the above-captioned matter. By Order dated January 9, 2024, I granted PGW's Motion and cancelled the scheduled hearing.

By Call-in Telephone Cancellation/Reschedule Hearing Notice dated January 10, 2024, the telephone hearing in the present matter was rescheduled for March 1, 2024, at 10:00 a.m.

On January 17, 2024, I issued a second Prehearing Order reminding the parties of the time and date of the hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on March 1, 2024. Donovan Jacob Adams appeared *pro se* and testified on his own behalf. Anita Murray, Esq. represented the Respondent, and presented the testimony of Jessica Antonetti, who is a Customer Review Officer for PGW. The Respondent sponsored five exhibits, which were admitted into the record.

The record in this matter closed upon receipt of my copy of the hearing transcript on March 25, 2024.

## FINDINGS OF FACT

1. The Complainant is Donovan Jacob Adams who resides at 4815 North Marshall Street, Philadelphia, PA 19120 (Service Address). Tr. 9.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Adams resides at the Service Address by himself.
4. Mr. Adams is employed full-time by the City of Philadelphia at an hourly rate of \$20.84 working 65 hours every two weeks. Tr. 17-18.
5. Mr. Adams' gross income is \$1,354.6 every two weeks, or \$35,219.6 per year. Tr. 14-15.
6. From the period October 15, 2020, to March 1, 2024, Mr. Adams made only four payments to his account with PGW, for a total of \$845.6. Tr. 25; PGW Exhibit 1.
7. Prior to the hearing, PGW waived \$144.88 in late payment charges from Mr. Adams' account. Tr. 23-25; PGW Exhibit 1.
8. As of the day of the hearing, Mr. Adams' outstanding balance with PGW was \$8,069.67. Tr. 23-25; PGW Exhibit 1.
9. Mr. Adams has not made a good faith effort to pay his outstanding balance to PGW. Tr. 25; PGW Exhibit 1.
10. On July 2, 2019, Mr. Adams filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Case No. 3714659, seeking a payment arrangement while reporting a gross household income of \$1,243 per month for a household of two individuals. PGW Exhibit 3.

11. On February 10, 2020, BCS issued a written decision on BCS Case No. 3714659 finding Mr. Adams to be a level 1 income customer and issuing a payment arrangement that required Mr. Adams to make monthly payments of \$204.00 per month, consisting of his regular budget bill of \$166.00 per month, plus \$38.00 per month towards the arrears, beginning with the March 2020 billing due date. Tr. 26-27; PGW Exhibit 3.

12. Mr. Adams defaulted on the Commission-issued payment arrangement. Tr. 10; PGW Exhibit 1.

13. PGW issued two payment arrangements to Mr. Adams: one on May 6, 2021, and another on November 15, 2021. PGW Exhibit 4.

14. Mr. Adams defaulted on both Company-issued payment arrangements. Tr. 31; PGW Exhibit 4.

### DISCUSSION

In his Formal Complaint, Mr. Adams alleged that PGW is threatening to shut off or has already shut off his gas service, that he is unable to pay his outstanding balance with PGW, and that there are incorrect charges in his gas bills from PGW. At the evidentiary hearing, Mr. Adams did not pursue his improper termination or incorrect charges claims against the Respondent.

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).

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat'l Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). Consequently, the Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; *Neal v. Metro. Edison Co.*, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990).

Additionally, all customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining

customers must pay. 66 Pa.C.S. § 1402(1). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234 (Opinion and Order entered Mar. 17, 2004).

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 and the length of the payment arrangement. In addition, it is Commission policy to exercise its discretion when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *Crawford v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007).

Section 1405(d) of the Responsible Utility Customer Protection Act reads in pertinent part:

**(d) *Number of payment arrangements.***

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. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). Section 1403 of the Public Utility Code defines “change in income” 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. In addition, "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403 (Definition of "Household income").

In this case, the Complainant has already received one Commission-issued payment arrangement and defaulted on it for non-payment. The Commission-issued payment arrangement was issued on July 2, 2019, based on a gross monthly income of \$1,243 and a household size of two.

During the hearing, the Complainant testified that he receives \$1,354.6 bi-weekly (or \$2,934.9 per month)<sup>1</sup> from his employment with the City of Philadelphia. This represents an increase over the gross household income of \$1,243 that he reported to BCS on July 2, 2019, in BCS Case No. 3714659. In addition, the number of people in Mr. Adams' household has decreased from two to one. Because the Complainant has experienced an increase instead of a decrease in income, he is not eligible for a subsequent Commission-issued payment arrangement. Furthermore, Mr. Adams has not made a good faith effort to pay his outstanding balance to PGW, having made only four payments to his account with PGW, for a total of \$845.60 during a period of 40 months, from October 15, 2020, to March 1, 2024. Accordingly, the Complaint shall be denied.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on 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).

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<sup>1</sup> \$1,354.6 bi-weekly x 26 paycheck periods in one year = \$35,219.6 per year / 12 months per year = \$2,934.9 per month.

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. The Complainant has failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement. 66 Pa.C.S. § 1405(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Donovan Jacob Adams in Donovan Jacob Adams v. Philadelphia Gas Works at Docket No. C-2023-3043707 is denied.

2. That Docket No. C-2023-3043707 be marked closed.

Date: June 24, 2024

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/s/  
Eranda Vero  
Administrative Law Judge