

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terri Gaines	:	
	:	
v.	:	F-2023-3044613
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies and dismisses the Formal Complaint of a gas service applicant because she failed to carry her burden of proving that she is entitled to a payment arrangement on an outstanding balance in order to have service restored.

HISTORY OF THE PROCEEDING

On November 28, 2023, Terri Gaines (Complainant or Ms. Gaines) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company, or Respondent).¹ In the Complaint, the Complainant placed checkmarks in the boxes indicating: “The utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.” The Complainant also

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3953254, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

alleged that she could not pay her outstanding balance of \$16,000 in full and was seeking to have her service restored at a monthly rate of \$500 or less.

On January 2, 2024, PGW filed an Answer admitting in part and denying in part various material allegations of the Complaint. PGW admitted, *inter alia*, that it terminated gas service to the Complainant on August 24, 2023. PGW alleged that the Complainant had received multiple PGW-issued payment agreements that remain unsatisfied as well as two PUC-issued payment agreements that remain unsatisfied. PGW requested that the Complaint be dismissed.

By Hearing Notice dated January 11, 2024, an Initial Call-In Telephonic Hearing was scheduled for March 7, 2024, and the matter was assigned to me.

A Prehearing Order was issued on February 8, 2024, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On March 7, 2024, 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, Jessica Antonetti, a Customer Review Officer at PGW. Ms. Antonetti sponsored three exhibits, which were admitted into the record without objection.

The record closed on March 28, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Terri Gaines.
2. The Respondent is Philadelphia Gas Works, a gas utility under the jurisdiction of the Pennsylvania Public Utility Commission.

3. The Complainant is requesting gas service from PGW at 5450 Pine Street, Philadelphia, PA (Service Address). Tr. 6.

4. The Complainant was a PGW customer at the Service Address from at least 2012 until August 24, 2023. PGW Exh. 2.

5. On March 30, 2017, the Complainant received a Commission-issued payment arrangement (BCS #3507895). Tr. 22; PGW Exh. 2.

6. On November 7, 2018, the Complainant received a Commission-issued payment arrangement (BCS #3663703). Tr. 22; PGW Exh. 2.

7. The November 7, 2018, payment arrangement was based on a gross monthly income of \$2,080 and a household size of two. PGW Exh. 3, p. 47.

8. The Complainant defaulted on both Commission-issued payment arrangements. Tr. 22; PGW Exh. 2.

9. The Complainant has received two PGW-issued payment agreements, both of which were broken for nonpayment. Tr. 21-22; PGW Exh. 2.

10. The Complainant has only made five payments since March 1, 2017. Tr. 19; PGW Exh. 1.

11. The last payment from the Complainant was received on February 24, 2023 in the amount of \$800. Tr. 20; PGW Exh. 1.

12. On August 24, 2023, PGW terminated gas service to the Complainant at the Service Address for nonpayment. Tr. 30; PGW Exh. 3, p. 112.

13. The Complainant resides alone at the Service Address. Tr. 6.

14. The Complainant's current gross income is approximately \$2,460 per month. Tr. 6.

15. The Complainant's total outstanding balance, as of the date of the hearing, was \$16,315.48. Tr. 19; PGW Exh. 1.

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).

In this case, the Complainant's gas service was terminated on August 24, 2023 for nonpayment. The Complainant's outstanding balance, as of the date of the hearing, is \$16,315.48. The Complainant is not disputing the outstanding balance, rather, the Complainant is seeking reconnection of her service. PGW is requiring the outstanding balance to be paid in full in order to restore service. The Complainant is also seeking a payment arrangement on the outstanding balance in order to have service restored.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applies to complaints requesting reconnection of a terminated service. This law provides strict guidelines that the Commission must follow when determining the payment of any outstanding balances and reconnection fees before the restoration of terminated service and whether a payment arrangement can be issued in those circumstances. Section 1407(c) of the Public Utility Code (Code) regarding reconnection of service reads in pertinent part:

(c) Payment to restore service.--

(2) A public utility may require:

- (i) Full 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.

- (ii) Full payment of any reconnection fees together with repayment over 12 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income exceeding 150% of the Federal poverty level but not greater than 300% of the Federal poverty level.
- (iii) Full payment of any reconnection fees together with payment over 24 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income not exceeding 150% of the Federal poverty level.

66 Pa.C.S. § 1407(c)(2)(i)-(iii) (emphasis added).

In this case, the Complainant has already defaulted on two Commission-issued payment arrangements. Thus, PGW is within its rights to require full payment of the outstanding balance before reconnecting the Complainant's service under Section 1407 of the Code.

However, in *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007) (Crawford), the Commission found that Section 1407 of the Code does not preclude the Commission from ordering a payment arrangement under Section 1405 when seeking reconnection of service. The Commission concluded that:

while Subsection 1407(c) delineates the terms a utility may impose upon a customer/applicant seeking restoration of service, Subsection 1407(c) in no way divests the Commission of its duty to act as the final arbiter of a utility consumer's rights with respect to payment disputes. If the consumer petitions the Commission for further relief, Subsection 1405(b) delineates the payment arrangement terms the Commission may then impose.

Crawford at 14.

Nevertheless, the Complainant is not eligible for a third Commission-issued payment arrangement under Section 1405 either. Section 1405(d) of the Public Utility Code regarding payment arrangements 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). "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 (emphasis added). Thus, the Commission may only order a subsequent payment arrangement if the Complainant demonstrates a decrease in income.

In this case, the Complainant was already the beneficiary of payment arrangements issued by the Commission on March 30, 2017, and November 7, 2018. The November 7, 2018 payment arrangement was based on a gross monthly income of \$2,080 and a household size of two. Exh 3 p. 47. The Complainant defaulted on this Commission-issued payment arrangement. Since the November 7, 2018 Commission-issued payment arrangement, the Complainant's income has increased to \$2,460 per month and her household size has decreased to one person. P.6. Therefore, the Complainant has not experienced a change in income as defined by 66 Pa.C.S. § 1405(d) and the Commission cannot establish or order PGW to issue another payment arrangement.

Also, the Complainant is not entitled to an extension of the Commission-issued payment arrangement. Section 1405(e) of the Public Utility Code regarding payment arrangements reads in pertinent part:

(e) Extension of payment arrangements.

If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e) (emphasis added). “Significant change in circumstance” is defined as:

Any of the following criteria when verified by the public utility and 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.

Here, the Complainant did not present any evidence that she defaulted on the Commission-issued payment arrangement as a result of a significant change in circumstance. Consequently, the Commission may not reinstate the payment arrangement issued on November 7, 2018, and extend the remaining term.

Finally, even though the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills. *Crawford* at 15-16. Furthermore, by law, a public utility is

entitled to receive payment for the service it provides, and the Complainant must pay the Respondent for the service she consumes. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat. Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303, *Neal v. Phila. Gas Works*, Docket No. Z 00971874, (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990). 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 if 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).

Here, the record does not support awarding the Complainant a payment arrangement as she has not demonstrated a good faith effort to pay her bills. The Complainant has a poor payment history and has shown an inability or unwillingness to comply with payment arrangements established by both the Commission and PGW. Additionally, over the past seven years, the Complainant has only made five payments on her account, leaving her with an outstanding balance of \$16,315.48.

Based on the foregoing, I find that the Complainant has failed to carry her burden of proving that she is entitled to a payment arrangement on her outstanding balance in order to have gas service reconnected. Accordingly, the Complaint shall be denied and dismissed.

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. 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 this proceeding.

5. A public utility may require full 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 defaulted on two or more payment arrangements. 66 Pa.C.S. § 1407(c)(2)(i).

6. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

7. 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 absent a change in income. 66 Pa.C.S. § 1405(d).

8. If a customer defaults on a payment arrangement established by the Commission under subsections 1405(a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown. 66 Pa.C.S. § 1405(e).

9. "Significant change in circumstance" is defined as: "Any of the following criteria when verified by the public utility and 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.

10. The Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills. *Crawford v. Nat. Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007).

11. The Commission may decline to issue a payment arrangement if the Complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013); *Stephen Getz v. Metro. Edison Co.*, Docket No. C-20142459964 (Final Order entered May 28, 2015).

12. A public utility is entitled to receive payment for the service it provides and the Complainant must pay the Respondent for the service she consumes. *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).

13. The Complainant has failed to carry her burden of proving that she is entitled to a subsequent Commission-issued payment arrangement or to an extension of the previous payment arrangement on her outstanding balance in order to have gas service reconnected. 66 Pa.C.S. §§ 332(a), 1405(d), (e), and 1407(c).

