

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Matthew Elliott

v.

Philadelphia Gas Works

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C-2024-3050272

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint filed by Matthew Elliott against Philadelphia Gas Works because the Complainant failed to meet his burden of proving that Philadelphia Gas Works improperly rejected his medical certification, that Philadelphia Gas Works improperly terminated his gas service, or that he is entitled to another Commission-issued payment arrangement or an extension of his previous payment arrangement.

HISTORY OF THE PROCEEDING

On July 23, 2024, Matthew Elliott (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,” “I would like a payment agreement,” and “[o]ther,” under which the Complainant provided the following statement:

My gas is currently off, I have been denied medical turn on and I am told I am not eligible for a payment arrangement due to a broken payment arrangement brokered by the PUC. I have been tossed around from person to person at the PUC with the last agent telling me he was at the bottom of the rung and could not help me.

Under the “requested relief” section of the Complaint form, the Complainant stated “I would like my services to be turned back on and my previous payment arrangement reinstated.”

On August 13, 2024, the Respondent filed an Answer to the Complaint.

By Initial Call-In Telephonic Hearing Notice dated August 21, 2024, an initial call-in telephonic hearing was scheduled for October 21, 2024 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 22, 2024. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, 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 he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on October 21, 2024. The Complainant appeared *Pro Se* and testified. The Respondent appeared and was represented by Graciela Christlieb, Esq, who presented the testimony of Patricia Bernard, a PGW

Customer Review Officer. PGW offered seven exhibits which were all admitted into the record.

The record closed on November 6, 2024, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Matthew Elliott.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant resides at 3307 Glennbrook Place, Philadelphia, PA 19114 (service address). Tr. 9-10.

Termination of Service/Medical Certification

4. The Complainant previously had accounts for gas service in his name for the first and second floors at the service address. Tr. 28; PGW Exh. 1.
5. The total balance on the Complainant's accounts for the service address is \$6,505.67. Tr. 29.
6. Between July 23, 2021 and October 14, 2024, the Complainant made two successful payments to Philadelphia Gas Works that posted to his account. Tr. 32; PGW Exh. 2.

7. Between July 23, 2021 and October 14, 2024, the Complainant made five payments to Philadelphia Gas Works, totaling \$16,857.87, that were cancelled due to insufficient funds. Tr. 12, 31; PGW Exh. 2.

8. PGW will place a customer on “cash-only” status beginning from the date of the last bounced check after two returned payments occurring within a twelve-month period. Tr. 32-33.

9. Philadelphia Gas Works placed the Complainant on cash-only status for twelve months due to these returned payments. Tr. 32.

10. On May 16, 2024, PGW issued the Complainant ten-day shut off notices for both the first and second floor units at the service address. Tr. 11, 34-35; PGW Exh. 4.

11. The termination notice issued to the Complainant informed the Complainant that the shut off notices would become active on May 28, 2024, and that the notices would remain active for 60 days. Tr. 35; PGW Exh. 4.

12. Both termination notices informed the Complainant of how he could avoid termination of service, including paying the past due balance, paying the amount owed on his most recent payment plan, making a payment arrangement, or contacting PGW to dispute the bill. PGW Exh. 4.

13. When PGW makes collection calls that are answered by answering machines, the system hangs up on the answering machine for privacy reasons. Tr. 36, 41.

14. On May 21, 2024, and May 22, 2024, PGW made day collection calls and evening collection calls to the first floor and second floor units. Tr. 36-37; PGW Exh. 5.

15. Each of PGW's collection calls were answered by an answering machine. Tr. 36-37; PGW Exh. 5.

16. The Complainant has used three medical certifications to stop termination of service on his current balance. Tr. 20, 34; PGW Exh. 3.

17. On or about July 15, 2024, PGW issued the Complainant a Medical Emergency Rejection Notice advising him that he had been denied medical protection by PGW, and that his gas service could be shut off. PGW Exh. 3.

18. The Complainant will not be eligible to use any additional medical certifications on his account until he pays his outstanding balance down to zero dollars. Tr. 34; PGW Exh. 3.

19. Philadelphia Gas Works terminated the Complainant's gas service. Tr. 10-11.

Payment Agreement

20. The Complainant's household is a three-person household. Tr. 16.

21. On September 15, 2017, the Complainant received a Commission-issued payment arrangement. Tr. 38; PGW Exh. 6

22. The Complainant defaulted on this Commission-issued payment arrangement due to non-payment. Tr. 38-39; PGW Exh. 6.

23. On February 12, 2024, the Complainant received a second Commission-issued payment arrangement. Tr. 39; PGW Exh. 6.

24. The Complainant defaulted on this second Commission-issued payment arrangement due to non-payment. Tr. 39; PGW Exh. 6.

25. At the time of his most recent Commission-issued payment arrangement, the Complainant's household was a three-person household consisting of himself, his girlfriend, and his girlfriend's son. Tr. 16

26. The Complainant's gross monthly income at the time of the Commission-issued payment agreement was \$3,000, with the Complainant being the sole source of income. Tr. 16-17.

27. At the time of the hearing, the Complainant's household was still a three-person household. Tr. 17.

28. At the time of the hearing, the Complainant's gross monthly income was approximately \$5,000, his girlfriend's gross monthly income was approximately \$2,500, and his girlfriend's son's gross monthly income was approximately \$2,800, for total gross monthly household income of approximately \$10,300. Tr. 17-18.

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). That is, by presenting 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. 2 Pa.C.S. § 704; *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). 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 Comp. 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).

In the present case, the Complainant challenged PGW's refusal to accept any additional medical certifications from him, as well as PGW's decision to terminate his gas service. The Complainant requested that his gas service be restored and that his previous payment arrangement be reinstated.

Medical Certifications

The Commission's regulations at 52 Pa. Code §§ 56.111-56.118 govern medical certifications. Generally, the Commission's regulations provide as follows:

A public utility may not terminate service, or refuse to restore service, to a premises when a licensed physician or nurse practitioner has certified that the customer or an applicant seeking restoration of service under § 56.191 (relating to payment and timing) or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility. The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section.

52 Pa. Code § 56.111.

Regarding the length of postponements and renewals of medical certificates, the Commission's regulations also provide, in pertinent part:

In instances when a customer has not met the obligation in § 56.116 to equitably make payments on all bills, the number of renewals for the customer's household is limited to two 30-day certifications filed for the same set of arrearages. In these instances the public utility is not required to honor a third renewal of a medical certificate.

52 Pa. Code § 56.114(2).

The record reflects that the Complainant has used three medical certifications on his current balance. Tr. 34; PGW Exh. 3. The record also reflects that the total balance on the Complainant's two accounts for the service address is \$6,505.67. Tr. 29. Clearly, the Complainant has not made equitable payments towards his bills. As such, PGW was not required to accept any additional medical certifications on his behalf for this balance. Accordingly, this issue is denied.

Termination of Service

Regarding authorized termination of service, Commission regulations provide in pertinent part that “[a] public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91–56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer . . . [n]on-payment of an undisputed delinquent account.” 52 Pa. Code § 56.81(1).

Regarding general notice procedures, Commission regulations provide in pertinent part that:

Prior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

52 Pa. Code § 56.91(a).

Regarding personal contact prior to termination, Commission regulations provide that:

Except when authorized under § 56.71, § 56.72 or § 56.98 (relating to interruption of service; discontinuance of service; and immediate termination for unauthorized use, fraud, tampering or tariff violations), a public utility may not interrupt, discontinue or terminate service without attempting to contact the customer or responsible adult occupant, either in person, by telephone or electronically with the customer's consent, to provide notice of the proposed termination at least 3 days prior to the scheduled termination using one of the methods in this section. If personal contact by one method is not possible, the public utility is obligated to attempt another method.

52 Pa. Code § 56.93(a).

The record reflects that between July 23, 2021 and October 14, 2024, the Complainant made only two successful payments to Philadelphia Gas Works that posted to his account. Tr. 32; PGW Exh. 2. The record further reflects that during that same time period, the Complainant made five payments to Philadelphia Gas Works, totaling \$16,857.87, that were cancelled due to insufficient funds. Tr. 12, 31; PGW Exh. 2. Three of those cancelled payments occurred on July 15, 2024. Tr. 32; PGW Exh. 2. Under these

circumstances, PGW clearly had grounds to terminate the Complainant's gas service pursuant to 52 Pa. Code § 56.81(1).

Regarding the notices issued to the Complainant, the record demonstrates that PGW issued the Complainant ten-day shut off notices for both the first and second floor units at the service address on May 16, 2024. Tr. 11, 34-35; PGW Exh. 4. Each termination notice informed the Complainant that the shut off notice would become active on May 28, 2024, and that the notice would remain active for 60 days. Tr. 35; PGW Exh. 4. The termination notices both informed the Complainant of how he could avoid termination of service, including paying the past due balance, paying the amount owed on his most recent payment plan, making a payment arrangement, or contacting PGW to dispute the bill. PGW Exh. 4. Under these circumstances, PGW's issuance of these termination notices did not violate the requirements of 52 Pa. Code § 56.91.

Although the Complainant claimed that PGW did not try to call or contact him about his pending termination, the record reflects that PGW made several unsuccessful attempts to reach him by phone to alert him to the pending termination. PGW's notices and attempted telephone calls to the Complainant satisfied the notice requirements provided for in 52 Pa. Code § 56.91 as well as the personal contact requirements set out in 52 Pa. Code § 56.93. Based on the Complainant's non-payment as well as the steps PGW followed to provide the Complainant notice of termination, I cannot conclude that PGW improperly terminated the Complainant's gas service.

Payment Agreement

Regarding payment agreements, it is important to note that Chapter 14 of the Public Utility Code, 66 Pa.C.S. §§ 1401-1419 (Chapter 14) was in effect and

governed the conduct at issue at the time of the conduct in question in this matter.¹ Chapter 14 has subsequently sunset, effective December 31, 2024, according to its provisions, and is not currently in effect. However, the Commission recently addressed the sunset of Chapter 14, in pertinent part, as follows:

Thus, it is the Commission’s present view and statement of policy herein that all final orders issued pursuant to Chapter 14 of the Code remain in effect and are enforceable by the Commission unless reversed on appeal or amended by the Commission after notice and opportunity to be heard. 66 Pa.C.S. § 703(e), (g).

Additionally, with regard to the provision of payment arrangements, and without prejudging any future matters that may come before us, the Commission will maintain its application of the four-tiered process establishing the length of payment arrangements currently articulated in Chapter 14. This includes principles provided in Section 1405(b) and the relevant definitions of “change in income” and “significant change in circumstance” as provided in Section 1403 of the Code, 66 Pa.C.S. §§ 1403, 1405(b).

Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024). Accordingly, the provisions of Chapter 14 will be applied here.

The Complainant has requested that his prior payment agreement be reinstated. Regarding the Complainant’s request for a second Commission-issued payment arrangement, Chapter 14 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.

¹ See *Ghaderi v. St. Bd. of Osteopathic Med.*, 302 A.3d 240 (Pa. Cmwlth. 2023); *Miegoc v. W.C.A.B.*, 961 A.2d 269 (Pa. Cmwlth. 2008).

§ 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.”

Chapter 14 also 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.

The record reflects that the Complainant has received two Commission-issued payment agreements, the most recent of which was issued on February 12, 2024. The record further reflects that the Complainant defaulted on both of these payment agreements due to non-payment. Additionally, the record demonstrates that the Complainant’s gross monthly household income has increased from \$5,000 to \$10,300. Clearly, the Complainant does not qualify for an additional payment agreement based on a change in income since his income actually increased since his most recent payment agreement.

Additionally, the Complainant claimed that he defaulted on his most recent payment agreement due to open heart surgery. However, the Complainant's own testimony revealed that his open-heart surgery occurred on October 3, 2023. Since the Commission issued him a payment agreement on February 12, 2024, this already existing condition cannot be considered a "significant change in circumstances" under 66 Pa.C.S. § 1403. Moreover, the Complainant did not demonstrate that he meets any of the other criteria for a "change in circumstances" under 66 Pa.C.S. § 1403. The Complainant is not eligible for another Commission-issued payment agreement, or an extension of his prior Commission-issued payment agreement.

Accordingly, 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. A public utility may not terminate service, or refuse to restore service, to a premises when a licensed physician or nurse practitioner has certified that the customer or an applicant seeking restoration of service under § 56.191 (relating to

payment and timing) or a member of the customer's or applicant's household is seriously ill or afflicted with a medical condition that will be aggravated by cessation of service. The customer shall obtain a letter from a licensed physician verifying the condition and promptly forward it to the public utility. The determination of whether a medical condition qualifies for the purposes of this section resides entirely with the physician or nurse practitioner and not with the public utility. A public utility may not impose any qualification standards for medical certificates other than those specified in this section. 52 Pa. Code § 56.111.

5. In instances when a customer has not met the obligation in § 56.116 to equitably make payments on all bills, the number of renewals for the customer's household is limited to two 30-day certifications filed for the same set of arrearages. In these instances the public utility is not required to honor a third renewal of a medical certificate. 52 Pa. Code § 56.114(2).

6. The Complainant failed to meet his burden of demonstrating that PGW improperly refused to accept his medical certification. 66 Pa.C.S. § 332(a).

7. A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91–56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer . . . [n]on-payment of an undisputed delinquent account. 52 Pa. Code § 56.81(1).

8. Prior to terminating service for grounds authorized by § 56.81, a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days. 52 Pa. Code § 56.91(a).

9. A public utility may not interrupt, discontinue or terminate service without attempting to contact the customer or responsible adult occupant, either in person, by telephone or electronically with the customer's consent, to provide notice of the proposed termination at least 3 days prior to the scheduled termination using one of the methods in this section. 52 Pa. Code § 56.93(a).

10. The Complainant failed to meet his burden of demonstrating that PGW improperly terminated his gas service. 66 Pa.C.S. § 332(a).

11. The Commission will maintain its application of the four-tiered process establishing the length of payment arrangements currently articulated in Chapter 14. This includes principles provided in Section 1405(b) and the relevant definitions of "change in income" and "significant change in circumstance" as provided in Section 1403 of the Code, 66 Pa.C.S. §§ 1403, 1405(b). *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024).

12. 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).

13. "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.

14. 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).

15. "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.

16. Complainant failed to sustain his burden of demonstrating that he should receive a third Commission-issued payment arrangement or an extension of his previous payment arrangement. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed in Matthew Elliott v. Philadelphia Gas Works at Docket No. C-2024-3050272 is denied.

2. That the Secretary's Bureau shall mark docket number C-2024-3050272 as closed.

Date: January 31, 2025

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