BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Brian Powell :

:

v. : F-2014-2451757

:

Philadelphia Gas Works :

# INITIAL DECISION

## Before

Cynthia Williams Fordham

Administrative Law Judge

The Complainant requested a payment arrangement. A portion of the Complainant’s balance was arrearage from the Respondent’s Customer Responsibility Program. The Commission cannot give the Complainant a payment arrangement on customer assistance program arrearages. Since the Complainant’s payment history is poor, he has not demonstrated that he should have a payment arrangement on the non-customer assistance program arrearage. The complaint is dismissed because the Complainant failed to sustain his burden of proof.

# HISTORY OF THE PROCEEDING

On November 5, 2014, Brian Powell (“Powell” or “Complainant”) filed a formal complaint against the Philadelphia Gas Works (“PGW” or “Respondent”) alleging, the following: 1) that the Respondent is threatening to shut off his service; 2) that he wants to get back on the Respondent’s Customer Responsibility Program (“CRP”) and pay about $98.00 a month; and 3) that he would like a payment agreement. This is a timely appeal of the Bureau of Consumer Services’ decision (#3284805).

On November 26, 2014, the Respondent filed an answer. The Respondent admitted that the Complainant wants a payment agreement. The Respondent stated that it issued a shut off notice on September 2, 2014. The Respondent averred that the Complainant established service at the service address on October 9, 2009. The Respondent noted that the Complainant has broken two PGW issued payment agreements. He had four prior CRP agreements. The Respondent referred to a Bureau of Consumer Services Decision Report, dated September 23, 2014, requiring the Complainant to pay a budget payment of $142.00 plus $62.00 towards the arrearage for a total $204.00 for 60 months beginning in October 2014. The Respondent noted that the Complainant’s balance was $3,785.57.

By hearing notice dated February 17, 2015, this case was assigned to the undersigned and the hearing was scheduled for Thursday, March 19, 2015 at 9:30 a.m.

The undersigned sent a Prehearing Order to the parties on February 19, 2015.

A hearing was held in this matter on March 19, 2015, in the Philadelphia Regional Office at 801 Market Street before Administrative Law Judge Cynthia Williams Fordham. The Complainant, Brian Powell, testified in support of the complaint. Graciela Christlieb, Esquire, represented the Respondent. The Respondent presented one witness, Joyshalyn Moore, a customer review officer for the Respondent, who sponsored four exhibits:

PGW Exhibit 1 - Contacts for the Complainant’s Account;

PGW Exhibit 2 - Specific Service Agreement Statement of Account;

PGW Exhibit 3 - Payment Arrangement History; and

PGW Exhibit 4 - Commission Bureau of Consumer Services Decision.

The record in this case consists of a 24-page transcript of the hearing and four exhibits. The record closed on March 30, 2015, when the transcript was received.

# FINDINGS OF FACT

1. The Complainant is Brian Powell, 2115 East Cambria Street, Philadelphia, PA 19134 (service address).

2. The Respondent in this proceeding is the Philadelphia Gas Works.

3. The Complainant has a residential gas account with the Respondent (Tr. 6; PGW Ex. 2).

4. The Complainant’s service was terminated on August 23, 2012, for nonpayment (Tr. 11; PGW Ex. 1).

5. The Complainant made the required payment on August 29, 2012, and the service was restored (Tr. 12; PGW Ex. 1).

6. Prior to August 2012, the Complainant was enrolled in CRP three times (PGW Ex. 1).

7. The Complainant was reenrolled in CRP from August 27, 2012, to May 1, 2013 (Tr. 6, 12; PGW Ex. 1).

8. The Complainant’s CRP payment was $95.00 a month (Tr. 8, 20-21; PGW Ex. 2).

9. The Complainant made four payments between August 2012 and May 1, 2013 (Tr. 8, 20-21; PGW Ex. 2).

10. The Complainant’s service was terminated on May 1, 2013, for nonpayment (Tr. 12; PGW Ex. 1).

11. When the Complainant contacted the Respondent to have his service restored, the Respondent gave him the following options: pay the $573.23 cure amount for CRP and the reconnection fee to be reenrolled in CRP or pay 1/24 of the balance and the reconnection fee and enter into a payment arrangement (Tr. 13; PGW Ex. 1).

12. The Complainant chose to pay $203.14 to have his service turned on and have a payment arrangement (Tr. 13).

13. The Respondent’s technician went to the service address on August 6, 2014, to terminate the Complainant’s service for nonpayment (Tr. 14, 15; PGW Ex. 1).

14. The service was not terminated on August 6, 2014, because the Complainant stated that he had a medical certificate (Tr. 14, 15; PGW Ex. 1).

15. The Complainant filed an informal complaint with the Bureau of Consumer Services (“BCS”) at BCS #3284805 on September 12, 2014 (PGW Ex.4).

16. On September 24, 2014, BCS issued a decision (BCS #3284805) establishing a payment arrangement (Tr. 14, 15, 20; PGW Ex. 1; PGW Ex. 4).

17. When the payment arrangement was established, the Complainant’s account balance was $3,697.11 and he was a level 1 customer (Tr. 14, 15, 20; PGW Ex. 1; PGW Ex. 4).

18. The Complainant made two payments in 2014 and no payments in 2015 (Tr. 18; PGW Ex. 2).

19. The Complainant defaulted on PGW payment arrangements established on June 1, 2012 and May 3, 2013 (Tr. 21; PGW Ex. 3).

20. At the time of the hearing, the Complainant’s gross monthly income was $997.30 with one person in the household (Tr. 6, 17).

21. The Complainant’s income has not changed significantly since 2012

(Tr. 6. 17).

22. At the time of the hearing, the Complainant needed to pay $1,224.00 for the catch up amount for the Commission payment arrangement or pay $1,694.86 for the cure amount to be reenrolled in CRP (Tr. 19).

23. At the time of the hearing, the Complainant’s account balance was $5,003.30 (Tr. 18; PGW Ex. 2).

# DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, the Complainant is the proponent of a rule or order. Therefore, the Complainant bears the burden of proving by a preponderance of the evidence that the Respondent has violated the Public Utility Code or a regulation or order of the Commission. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The record in this proceeding must be reviewed to determine whether the Complainant has satisfied his burden of proof. If the burden of proof has been satisfied, then it must be determined whether the Respondent has submitted evidence of “co-equal” value or weight to refute the Complainant’s evidence. If this has occurred, the burden of proof has not been satisfied, unless the Complainant presented additional evidence. *Morrissey v. Pa. Dept. of* *Highways*, 424 Pa. 87, 225 A.2d 895 (1967).

The Commission’s decision must be supported by substantial evidence. 2 Pa.C.S. § 704. The term “substantial evidence” has been defined by various Pennsylvania courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is more than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm’n,* 489 Pa.109, 413 A. 2d 1037 (1980); *Murphy v. Dept. of Public Welfare*, 85 Pa. Cmwlth. 23, 480 A.2d 382 (1984).

The Complainant has requested an affordable payment arrangement. He testified that he was not able to pay his CRP payment when he was on CRP (Tr. 6).

Based on the information in the record, the Complainant is a level 1 customer whose income has been at less than 100% of the Federal poverty level since at least 2012. He is the only one in the household (Tr. 6, 17; PGW Ex. 4).

The Commission follows the rules set forth in the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* when it addresses payment arrangements. Section 1405(c) relates to payment arrangements for customers on the customer assistance programs. It reads as follows:

(c) Customer assistance programs.--Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements[[1]](#footnote-1) negotiated or approved by the commission.

The Respondent stated that the Complainant is required to pay $1,694.86 to be reenrolled in CRP. The Complainant has testified that he does not have a lump sum to pay the Respondent (Tr. 6).

Informal complaint/BCS decision

The Complainant filed an informal complaint with the Commission at BCS #3284805. On September 24, 2014, BCS established a payment arrangement requiring the Complainant to pay $142.00 a month for his budget bill and $62.00 a month on the arrearage for a total of $204.00 beginning in October 2014. The Complainant appealed this decision because he wanted to pay 10% of his income or approximately $98.00.

The Commission has determined that a BCS decision is subject to review upon the timely filing of a formal Complaint. Since this complaint is a timely appeal of a BCS decision, the Commission must determine if the BCS determination complies with Chapter 14. The applicable regulation, 52 Pa. Code § 56.403(a), states that the review of informal complaint decisions will be heard *de novo* by an administrative law judge or special agent. De novo review involves full consideration of the case anew. *Young v. Department of Environmental Resources,* 144 Pa. Cmwlth. 16, 600 A.2d 667 (1991).

In this case, BCS granted the Complainant a payment arrangement on his $3,697.11 account balance. The CAP arrearage was not mentioned. There is no evidence to show that the CAP arrearage was removed from the payment arrangement. It is undisputed that the Commission cannot give the Complainant a payment arrangement on CRP arrears. Therefore, the BCS decision did not comply with Chapter 14.

Appeal

The Complainant appealed the BCS decision because he did not have $204.00 a month. He wants to pay $97.00 a month (Tr. 6). He testified that he wants to be reenrolled in CRP or to have a payment arrangement so that he can pay his bills and prevent the termination of his gas service (Tr. 23).

The evidence in the record is that at the time of the hearing, the Complainant’s past due balance was $5,003.30 and the non-CRP arrearage was $3,308.44.

Although Section 1405(c) of the Public Utility Code, 66 Pa.C.S. § 1405(c), prohibits the Commission from setting a payment arrangement on an arrearage accrued under customer assistance program rates, when a Complainant has a mixed arrearage, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. Nevertheless, the Commission is not required to set a payment arrangement on a bifurcated arrearage and may decline to do so if the Complainant has exhibited a poor payment history and inability to keep prior payment agreements with the company. *Hewitt v. PECO Energy Co*., Docket No. F-2011-2273271 (Order entered September 12, 2013). Since the Commission can only give a limited number of payment agreements, a payment agreement issued on a non-CAP arrearage in a scenario where the Complainant is likely to default is not in the customer’s best interest. *Joy Turner v Philadelphia Gas Works*, C-2013-2388319 (Opinion and Order Entered June 19, 2014).

The Complainant has admitted that he did not pay his CRP payments in the past. He has been terminated at least twice for nonpayment since between 2012 and 2014. The evidence in the record shows that he has a poor payment history. Since the Complainant has to pay his current bill plus an amount on the arrearage, any payment arrangement would exceed $98.00. Since the Complainant has demonstrated a poor payment history and history of defaults, the request for a payment arrangement is denied. See *Joy Turner v. Philadelphia Gas Works*, C-2013-2388319.

The Complainant has failed to sustain his burden of proof. The Complainant has failed to present a *prima facie* case. He has not demonstrated that he is entitled to a payment arrangement.

Accordingly, the complaint is dismissed in its entirety.

CONCLUSIONS OF LAW

# 1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.

2. The Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

3. Review of informal complaint decisions will be heard *de novo* by an administrative law judge or special agent. 52 Pa. Code § 56.403

4. Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission. 66 Pa.C.S

§ 1405 (c).

5. Since the Commission can only give a limited number of payment agreements, a payment agreement issued on a non-CAP arrearage in a scenario where the Complainant is likely to default is not in the customer’s best interest. *Joy Turner v Philadelphia Gas Works*, C-2013-2388319 (Opinion and Order entered June 19, 2014).

6. The Complainant failed to sustain his burden of proof.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint filed by Brian Powell against the Philadelphia Gas Works at Docket No. F-2014-2451757 is dismissed in its entirety.

2. That this case is marked closed.

Date: July 15, 2015 /s/

Cynthia Williams Fordham

Administrative Law Judge

1. In Act 155 of 2014, the word agreement in 66 Pa.C.S. § 1405 was changed to arrangement. Act 155 became effective December 22, 2014. [↑](#footnote-ref-1)