**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held October 1, 2015 |
| Commissioners Present:  Gladys M. Brown, Chairman  John F. Coleman, Jr., Vice Chairman  Pamela A. Witmer  Robert F. Powelson |  |
| Rashida Pickett | C-2014-2444967 |
| v. |  |
| Philadelphia Gas Works |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Rashida Pickett (Complainant or Ms. Pickett) filed on June 16, 2015, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene R. Davis Heep, issued on June 2, 2015, in the above-captioned proceeding.[[1]](#footnote-1) Philadelphia Gas Works (PGW) filed Replies to Exceptions on July 1, 2015.[[2]](#footnote-2) For the reasons stated below, we shall deny the Complainant’s Exceptions and adopt the Initial Decision.

**History of the Proceeding**

On September 17, 2014, the Complainant filed a Formal Complaint (Complaint) against PGW claiming that she could not make the over $2,000 payment requested by PGW to re-enroll her in its Customer Responsibility Program (CRP).[[3]](#footnote-3) For relief, she requested to pay $250 or $275 on some kind of payment arrangement to avoid service termination. Complaint at 2-3; I.D. at 1.

On October 20, 2014, PGW filed an Answer to the Complaint (Answer) in which it averred that the Complainant had previously broken three PGW-issued payment arrangements and had been suspended from the CRP three times. PGW requested that the Commission dismiss the Complaint.

On January 22, 2015, a hearing was held in this matter. The Complainant appeared *pro se* and testified on her own behalf. PGW was represented by its counsel who presented the testimony of one witness and offered five exhibits which were admitted into the record. The record contains a twenty-nine page transcript and five exhibits. The record was closed on February 19, 2015.

In her Initial Decision, issued on June 2, 2015, the ALJ dismissed the Complaint. I.D. at 8. As noted, *supra*, the Complainant filed Exceptions on June 16, 2015. PGW filed Replies to Exceptions on July 1, 2015. On July 16, 2015,[[4]](#footnote-4) the Complainant filed a Response to the Replies to Exceptions.[[5]](#footnote-5)

**Discussion**

**Legal Standards**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that PGW is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required 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. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

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 PGW. If the evidence presented by PGW is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut that of PGW. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (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. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

Furthermore, the Responsible Utility Customer Protection Act (Chapter 14 or the Act) applies when a Complainant is seeking a payment arrangement. Chapter 14 authorizes the Commission to establish payment agreements between a public utility, customers and applicants within the limits set forth in the Act. [66 Pa. C.S. § 1405(a)](https://www.lexis.com/research/buttonTFLink?_m=c6ea10d698a88aab31fc41765f7fb262&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2014%20Pa.%20PUC%20LEXIS%20249%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=15&_butInline=1&_butinfo=66%20PACS%201405&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAl&_md5=c7ae4d2decd227bacc28b004a5f020e0). Section 1405(a), in pertinent part, provides 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.

. . .

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

**(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.

. . .

**(f) Failure to comply with payment arrangement.--**Failure of a customer to comply with the terms of a payment arrangement shall be grounds for a public utility to terminate the customer's service. Pending the outcome of a complaint filed with the commission, a customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

**ALJ’s Initial Decision**

ALJ Heep made twelve Findings of Fact and reached four Conclusions of Law. I.D. at 2-3, 7. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In discussing this case, the ALJ emphasized that when a Complainant has arrearages that are comprised of both Customer Assistance Program (CAP) charges and non-CAP charges, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. However, the ALJ noted that 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 an inability to keep prior payment arrangements with the Company.[[6]](#footnote-6) Furthermore, the ALJ noted that since the Commission can only give a limited number of payment arrangements, a payment arrangement issued on a non-CAP arrearage in a scenario where the Complainant is

likely to default is not in the Complainant’s best interest.[[7]](#footnote-7) I.D. at 5-6.

Specifically, the ALJ noted that relief is not available in the instant proceeding because the Complainant indicated that while she is interested in getting back on PGW’s CRP program, she cannot afford the huge payment required for her to re-enroll in the program. Additionally, the ALJ noted that Section 69.265 of the Commission’s Regulations, 52 Pa. Code § 69.265, addresses the elements of design for CAP programs such as the CRP, and Section 69.265(8) of the Commission’s Regulations, 52 Pa. Code § 69.265(8), provides that a person removed from such a program may be reinstated at the utility’s discretion. According to the ALJ, in the instant proceeding, PGW has chosen to require payment of a cure amount, or unpaid CRP charges, prior to re-enrolling the Complainant in the CRP program. The ALJ noted that nothing in the record supports a finding that the required payment is in violation of any Regulation, the Code, PGW’s tariff or a Commission Order. Furthermore, the ALJ stated that even if the Complainant is only seeking a payment arrangement, relief is still not available. The ALJ stressed that although the Complainant has not previously had a Commission-ordered payment arrangement and is eligible for one pursuant to 66 Pa. C.S. § 1405(d), her arrearages are comprised of both CAP/CRP and non-CAP charges and no Commission-ordered payment arrangement can be awarded on the CAP/CRP portion. *Id*. at 6.

The ALJ further noted that even if the Commission decides to bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage, the Complainant is still faced with the hurdle of overcoming a record showing that she has not kept prior payment arrangements with the Company.The Complainant is also faced with the burden of showing that it is not in her best interest for the Commission to deny her a payment arrangement at this time because she is likely to default*.*  The ALJ noted that the Commission may issue the Complainant one Commission-ordered payment arrangement and may even extend it under very limited and specific circumstances. However, a payment arrangement on the current non-CAP portion of the Complainant’s bill would still leave her with a substantial CAP/CRP balance of about $3,000. The ALJ, therefore, concluded that given the existing circumstances, awarding a Commission-issued payment arrangement to the Complainant was not in the best interest of the Complainant at this time. *Id*. at 6-7.

Consistent with all of the above findings, the ALJ dismissed the Complaint but noted that the ruling does not preclude the Complainant from meeting with PGW to further discuss the CRP and payment arrangements and terms presented by PGW during the hearing, as reflected in Finding of Fact No. 12 of the ALJ’s Initial Decision, given the Complainant’s recent positive payment history. *Id*. at 7-8.

**Exceptions and Replies**

We note at the outset that the Exceptions of the Complainant are not in strict compliance with Section 5.533(b) of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.533(b), which provides that:

(b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.

Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy and inexpensive determination.

Any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In her Exceptions, the Complainant states that she did not intentionally default on the three previous Company-issued payment arrangements but was forced to do so as a result of circumstances beyond her control. According to the Complainant, she defaulted on the payment arrangements because she had financial difficulties which resulted from health issues and termination of her job. The Complainant also avers that if offered a payment arrangement without having to pay the substantial amount PGW is requesting, she can make full and timely payments as evidenced by her recent positive payment history with the Company. Exc. at 1-2.

In its Replies to Exceptions, PGW contends that the Complainant’s Exceptions should be denied because they fail to demonstrate that the ALJ’s Initial Decision is not supported by substantial evidence but merely reiterates the Complainant’s testimony during the hearing. PGW asserts that the Complainant’s averments in her Exceptions are not corroborated by her poor payment history with the Company. PGW states that the Complainant currently has a substantial outstanding balance on her account due to missed payments and late payment charges and that she made only six payments in the last twelve months prior to the hearing. R. Exc. at 2.

**Disposition**

Upon consideration of the record in this proceeding, we will deny the Complainant’s Exceptions and adopt the ALJ’s Initial Decision. The Complainant in this case stated that she was out of work for nine months in 2011 after a medical diagnosis. According to the Complainant, this caused her to default on an existing Company-issued payment arrangement. The Complainant indicated that in 2013, she was laid off permanently from her job of thirteen years. Tr. at 10; I.D. at 2. The Complainant, who obtained a full-time job one month before the hearing, contented that she could not make the over $2,000 payment requested by PGW to re-enroll her in its CRP program, after she was taken off the program for defaulting on a prior payment arrangement. The Complainant requested that PGW reduce the payment to $250 or $275 on some kind of payment arrangement. Tr. at 11 and 15; I.D. at 3.

PGW, on the other hand, contended that the Complainant started falling behind on her bills in April 2008 and her service was terminated that year for non-payment. According to PGW, the Complainant filed for bankruptcy in 2008, and so she again became a customer of PGW and her account with the Company started with a zero balance that same year. Tr. at 18. PGW stated that despite starting again at zero balance, the Complainant, subsequently, was late in her payments and perpetually missed payments on her account. PGW indicated that the Complainant has defaulted on three Company-issued payment arrangements and has also defaulted on three CRP agreements, thereby resulting in the suspension of the agreements.[[8]](#footnote-8) Tr. at 19 and 22, PGW Exh. 3; I.D. at 3. PGW stated that the current balance on the Complainant’s account is $5,345.47, which is an accumulation of missed payments and late payment charges on the Complainant’s account. Additionally, PGW averred that the Complainant only made six payments out of the twelve months leading to the hearing. Tr. at 17 and 21; I.D. at 3. PGW averred that the Complainant, who is currently seeking to re-enroll in its CRP program, first enrolled in the program from April 3, 2009, to May 25, 2010. The Complainant again enrolled in the program from October 29, 2010, to September 7, 2012. Furthermore, the Complainant was enrolled in the program from September 7, 2012, to October 31, 2013. According to PGW, for the Complainant to be re-enrolled in the CRP program, she would have to pay the sum of $3,530.17 and also provide Social Security Cards and proof of income for everyone in her household.[[9]](#footnote-9) Tr. at 24-25.

Based on our review of the evidence, we agree with the ALJ that the record did not demonstrate that PGW’s requirement that the Complainant must pay a cure amount or unpaid CRP charges prior to re-enrolling in the CRP program did not amount to a violation of a Commission Regulation, the Code, PGW’s tariff, or a Commission Order. We note that PGW’s Universal Service Plan allows the Company to require customers to pay outstanding arrears in full prior to reenrollment in the CRP.[[10]](#footnote-10) Additionally, we concur with the ALJ that providing the Complainant with a Commission-issued payment arrangement is not appropriate under the circumstances in this case. As indicated by the ALJ, in a case like this, in which the Complainant has a mixed arrearage consisting of CAP and non-CAP amounts, we may bifurcate the arrearage and set a payment on the non-CAP arrearage. However, we are not required to set a payment arrangement on the bifurcated arrearage and may decline to do so if the Complainant has shown a poor payment history and an inability to maintain prior payment arrangements with the utility company. *Turner*, *supra*, at 5-6; *Hewitt*, *supra*, at 11-12. We may also determine that issuing a payment arrangement on which the customer is likely to default is not in the customer’s best interest. *Hewitt*, *supra*, at 11 n.4. In this case, the evidence and testimony provided by PGW demonstrates that the Complainant has defaulted on several Company-issued payment arrangements and has a poor payment history with the Company. Given the record in this proceeding, we find that the Complainant has not provided sufficient evidence to substantiate her burden of proving that a Commission-issued payment arrangement is in her best interest at this time. Accordingly, the Complainant’s Exceptions are denied.

In light of the above, we concur with the ALJ’s analysis and conclusions, as well as her decision to dismiss the Complaint based on the Complainant’s failure to carry her burden of proving that she is entitled to a Commission-issued payment arrangement at this time. However, we again reiterate that this ruling does not preclude the Complainant from meeting with PGW to further discuss the CRP and payment arrangements and terms presented by PGW during the hearing, given the Complainant’s recent positive payment history.

**Conclusion**

Based on our review of the Exceptions, the Initial Decision, and the record in this proceeding, we shall deny the Exceptions of Rashida Pickett, and adopt the ALJ’s Initial Decision; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of Rashida Pickett, filed on June 16, 2015, to the Initial Decision of Administrative Law Judge Darlene R. Davis Heep are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Darlene R. Davis Heep, issued June 2, 2015, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Rashida Pickett on September 17, 2014, against Philadelphia Gas Works is dismissed in its entirety, consistent with this Opinion and Order.
4. That the proceeding at this docket be marked closed.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 1, 2015

ORDER ENTERED: October 1, 2015

1. The Complainant e-mailed a courtesy copy of her Exceptions to the Commission’s Office of Special Assistants on June 5, 2015, but later filed her Exceptions in a timely manner with the Secretary’s Bureau on June 16, 2015. [↑](#footnote-ref-1)
2. On June 17, 2015, the Commission’s Secretary issued a Secretarial Letter to the Parties, stating that the Complainant’s timely-filed Exceptions did not contain a certificate of service or other indication that the Complainant served the Respondent with the Exceptions. Thus, the Secretary’s Bureau enclosed a copy of the Exceptions and notified the Respondent that any Replies to Exceptions would be due by July 6, 2015. [↑](#footnote-ref-2)
3. This Complaint is an appeal of a Bureau of Consumer Services (BCS) informal decision at BCS Case No. 3248123, dated September 9, 2014. [↑](#footnote-ref-3)
4. On July 8, 2015, prior to filing her Response to PGW’s Replies to Exceptions, the Complainant filed additional information regarding the ALJ’s Initial Decision. [↑](#footnote-ref-4)
5. In regard to Formal Proceedings, our Regulations at 52 Pa. Code §§ 5.533 and 5.535 allow for the filing of Exceptions and Replies to Exceptions when an ALJ issues an Initial Decision. However, there is no provision in our Regulations that allows a party to file a Response to Replies to Exceptions. Consequently, we will not consider the Complainant’s Response to the Replies to Exceptions in this proceeding. [↑](#footnote-ref-5)
6. *See*, *Hewitt v. PECO Energy Co*., Docket No. F-2011-2273271 (Order entered September 12, 2013) *(Hewitt)*. I.D. at 5. [↑](#footnote-ref-6)
7. *See*, *Joy Turner v. Philadelphia Gas Works*, Docket No. C-2013-2388319 (Order Entered June 19, 2014) *(Turner)*. I.D. at 6. [↑](#footnote-ref-7)
8. The most recent Company-issued agreement was on June 2, 2014. [↑](#footnote-ref-8)
9. The $3,530.17 payment requested by PGW includes $964.99 in arrears. [↑](#footnote-ref-9)
10. Philadelphia Gas Works Revised Universal Service and Energy Conservation Plan 2014-2016 submitted in compliance with 52 Pa. Code § 62.4, and updated on September 22, 2014, pursuant to Final Order entered on August 22, 2014, at Docket No. M-2013-2366301 (*PGW’s Universal Service Plan*). [↑](#footnote-ref-10)