

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rosa Brown	:	
	:	
v.	:	C-2018-3006416
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision dismisses the complaint of a gas service customer seeking a payment arrangement because the majority of the customer’s outstanding balance is comprised of customer assistance program arrears, which cannot be the subject of a payment arrangement approved by the Commission, and the customer has not made a good faith effort to pay her utility bills.

HISTORY OF THE PROCEEDING

On December 4, 2018, Rosa Brown (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which she alleged that Respondent is threatening to shut off her service and as relief she requested a payment arrangement that she can afford.

The Complaint is an untimely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) at case number 3619532, issued on November 14, 2018. The BCS decision dismissed Ms. Brown's informal complaint.

On December 27, 2018, PGW filed an answer in which it admitted that it issued Ms. Brown a 10-day shut off notice on April 30, 2018. Further, Respondent averred that the Complainant has been enrolled in its Customer Responsibility Program (CRP) since June 19, 2015. The Respondent requested that the Commission dismiss the Complaint.

On January 4, 2019, the Commission issued a hearing notice setting an initial telephonic hearing for March 5, 2019. The case was assigned to me pursuant to 52 Pa. Code § 56.174.¹ On February 27, 2019, a prehearing order was issued which advised the parties of various procedures applicable to this hearing.

The hearing convened as scheduled on March 5, 2019. Ms. Brown appeared *pro se*, testified on her own behalf, but did not offer any exhibits. Laureto Farinas, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Tiffany Jones, Senior Customer Service Compliance Specialist for PGW. Ms. Jones sponsored the following three (3) exhibits, which were admitted into the record:

PGW Exhibit 1 – Statement of Account
PGW Exhibit 2 – Payment Arrangement History
PGW Exhibit 3 – BCS Opening and Closing Reports, No. 3619532

The record² closed following the conclusion of the hearing.

¹ 52 Pa. Code § 56.174 (providing for review by a special agent of decisions of the BCS and any other case in which the issue is solely the ability to pay).

² Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

FINDINGS OF FACT

1. Complainant is Rosa Brown, who resides at 1419 S. 56th Street, Philadelphia, Pennsylvania (service address).
2. Respondent is Philadelphia Gas Works, which provides gas service to Complainant at the service address.
3. On June 19, 2015, Ms. Brown enrolled in Respondent's Customer Responsibility Program (CRP) with pre-program arrears of \$4,224.14. (PGW Exhibit 1).
4. At the time of the hearing, Ms. Brown was still enrolled in CRP. (PGW Exhibit 1).
5. On April 30, 2018, PGW issued Ms. Brown a 10-day shut off notice for nonpayment. (PGW Exhibit 1).
6. On May 30, 2018, Ms. Brown filed an informal complaint with BCS at Case No. 3619532 in which she requested a payment arrangement for her arrears. (PGW Exhibit 3).
7. On November 14, 2018, BCS dismissed Ms. Brown's informal complaint at BCS Case No. 3619532. (PGW Exhibit 3).
8. On December 4, 2018, Ms. Brown filed the instant formal complaint.
9. Ms. Brown's current gross monthly household income is \$3,224 which she receives from her employment.
10. Ms. Brown's household size consists of herself.

11. Since enrolling in CRP, Ms. Brown had made a total of three payments; two payments in 2015 and one payment in 2017. (PGW Exhibit 1).

12. On August 21, 2015, Ms. Brown made a payment for \$251; on October 12, 2015, she made a payment for \$125.00; and on July 14, 2017, she made a payment for \$250.00.

13. Ms. Brown's total outstanding balance at the time of the hearing was \$8,653.96. (PGW Exhibit 1).

14. Ms. Brown's total outstanding balance is comprised of CRP arrears of \$4,884.48.

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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa.Cmwlth. 1980).

Therefore, as the party seeking relief in the form of a payment arrangement, Ms. Brown bears the burden of proof.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Act), applies to complainants alleging inability to pay and requesting a Commission-ordered payment

arrangement. *See*, 66 Pa.C.S. § 1405(a), which provides that, “[t]he commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers . . . within the limits established by this chapter.”

However, the Act provides limitations that the Commission must follow including the length of payment arrangements and which account balances cannot be subject to payment arrangements. Regarding the length of payment arrangements, the Act provides, in relevant part, the following:

(b) Length of payment arrangements. -- The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. § 1405(b)(4). Ms. Brown’s gross monthly household income of \$3,224 for a household size of one exceeds 300% of the Federal poverty level. *See, Federal Register*, Vol. 84, No. 22, p. 1168 (February 1, 2019) (providing that a one-person household with a gross monthly household income of \$3,123 is at 300% of the Federal poverty level).³ Pursuant to the Act, the Complainant's household income would make her eligible for a six-month payment arrangement to extinguish her outstanding balance, absent any other restrictions in the Act.

However, the Act explicitly excludes the majority portion of Ms. Brown’s total outstanding balance from being the subject of a payment arrangement issued by the Commission.

³ Ms. Brown testified that she has been earning \$3,224 per month for about six or seven months prior to the hearing, which is an increase from her reported gross monthly income to BCS of \$1,733.33 in May of 2018. (PGW Exhibit 3). Respondent stated at the hearing that Ms. Brown’s current income, which increase Respondent was unaware until the hearing, makes her ineligible for CRP. Therefore, pursuant to its tariff, PGW expected Ms. Brown to be removed from CRP and offered a no money down payment arrangement for six months on her total outstanding balance.

Specifically, Section 1405(c) of the Act prohibits the Commission from issuing payment arrangements on customer assistance program (CAP) rates. Specifically, this provision provides:

(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.

66 Pa.C.S. § 1405(c). Since Respondent's CRP rates are customer assistance program rates, the portion of Ms. Brown's outstanding balance that is comprised of CRP arrears--i.e., \$4,884.48, cannot be the subject of a payment arrangement approved by the Commission. *Id.*; also see, *Maxwell v. Philadelphia Gas Works*, Docket No. C-2017-2607397 (Opinion and Order entered August 23, 2018) (recognizing that Respondent's CRP rates are CAP rates as used in 66 Pa.C.S. § 1405(c)).

Next, Ms. Brown's non-CAP arrears, which is \$3,981.48,⁴ will be addressed. The Commission determined that it has the authority to order a payment arrangement in mixed arrearage cases which are cases in which the customer has both CAP and non-CAP charges, as in Ms. Brown's instant case. In *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013) (*Hewitt*), the Commission held that it retained authority to issue a payment arrangement for the non-CAP portion of a mixed arrearage.

However, the Commission made clear that in cases where 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 will exercise its discretion to issue payment arrangements only on behalf of those who have demonstrated some evidence of a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *Hewitt*.

Therefore, before awarding a payment arrangement, there must also be an examination as to whether Ms. Brown has demonstrated some evidence of good faith efforts to pay her utility bills. As the Commission has made clear, while Section 1405 of the Act generally

⁴ The total outstanding balance (\$8,653.96) – CRP arrears (\$4,884.48) = \$3,981.48 (non-CAP arrears).

authorizes the Commission to issue a payment arrangement for a customer, it does not require it; rather, it is an exercise of the Commission's discretion which should be exercised very judiciously. *Hayes v. Philadelphia Gas Works*, Docket No. C-2017-2634526 (Opinion and Order entered October 1, 2018), *citing Hewitt*. The Commission may decline to issue a payment arrangement because of a complainant's poor payment history and an inability to keep prior payment arrangements with the utility. *Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013).

A review of Complainant's payment history shows that the Complaint has not demonstrated a good faith effort to pay her utility bills. On June 19, 2015, Ms. Brown enrolled in CRP with pre-program arrears of \$4,224.14. Over the following thirty-one (31) months, Ms. Brown made only three payments; she made two payments in 2015 and one payment in 2017. (See PGW Exhibit 1, account statement from June 19, 2015 to February 26, 2019). On August 21, 2015, Ms. Brown made a payment for \$251; on October 12, 2015 she made a payment for \$125.00, and on July 14, 2017, she made a payment for \$250. Ms. Brown made no payments in 2016 and 2018, as well as no payment in January and February of 2019. Further, Ms. Brown's total outstanding balance at the time of the hearing was \$8,653.96. (PGW Exhibit 1).

Based on the Complainant's poor payment history, three payments over 31 months, her inability to maintain CRP payments, I am constrained to conclude that the Complainant has not demonstrated a good faith effort to pay her bills. Therefore, I find that discretion is not warranted in granting Ms. Brown a payment arrangement on her non-CAP arrears. Accordingly, the Complainant's request for a Commission-issued payment arrangement will be denied.

CONCLUSIONS OF LAW

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

2. 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).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

4. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding.

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

6. Customer assistance program (CAP) 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).

7. The Commission has the authority to order a payment arrangement in a mixed arrearage cases which are cases in which the customer has both CAP and non-CAP charges. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

8. In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, the Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of a good faith effort to pay their utility bills or who have experienced a significant change of circumstances beyond their control. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

9. The Commission may decline to issue a payment arrangement because of a complainant's poor payment history and an inability to keep prior payment arrangements with

the utility. *Dorsey v. Philadelphia Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered November 22, 2013).

10. Complainant has failed to carry her burden of proof that she is eligible for a Commission-issued payment arrangement. 66 Pa.C.S. § 1405.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Rosa Brown against Philadelphia Gas Works at Docket No. C-2018-3006416 is denied.
2. That the docket at Docket No. C-2018-3006416 be marked closed.

Date: April 22, 2019

_____/s/
Gail M. Chiodo
Special Agent