

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rosa Brown	:	
	:	
v.	:	F-2020-3022061
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On August 17, 2020¹, Rosa Brown (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which she requested a Commission-issued payment arrangement that she can afford. The complaint is a timely appeal of a decision issued by the Commission’s Bureau of Consumer Services (BCS) dated June 10, 2020 at BCS No. 3724939, dismissing Ms. Brown’s informal complaint.

¹ The formal complaint was served upon Respondent on September 22, 2020.

On October 12, 2020, PGW filed an answer in which it admitted, *inter alia*, that it provides service at 1419 S. 56th Street, Philadelphia, PA (service address), and denied all other material allegations in the complaint. PGW concluded its answer by requesting dismissal of the complaint.

On October 14, 2020, the Commission issued a hearing notice to the parties, establishing an initial telephonic hearing for December 8, 2020, at 10:00 a.m. and assigning the undersigned as Presiding Officer.² On November 24, 2020, a Prehearing Order was issued reminding the parties of the date and time of the hearing and addressing, *inter alia*, the procedures applicable to the hearing.

The hearing convened as scheduled on December 8, 2020, at 10:00 a.m. Ms. Brown appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Laureto Farinas, Esquire, appeared on behalf of PGW and presented the testimony of one witness, Patricia Bernard, a Customer Review Officer for PGW. Ms. Bernard sponsored the following three (3) exhibits, which were admitted into the record:

PGW Exhibit 1 – Customer Assistance Program Agreement
PGW Exhibit 2 – Statement of Account
PGW Exhibit 3 – BCS Decision No. 3724939

The record closed on December 21, 2020, upon receipt of the 55-page telephonic hearing transcript.

For the reasons discussed below, the complaint will be denied.

² 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

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, a jurisdictional public utility, 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. (N.T. 26, 27, 28, 31; PGW Exhibits 1 and 2).
4. On March 13, 2019, Ms. Brown was removed from CRP. (N.T. 27, 31; PGW Exhibit 1).
5. In August 2019, Ms. Brown filed an informal complaint with BCS at Case No. 3724939, in which she requested a payment arrangement for her arrears. (PGW Exhibit 2 and 3).
6. On June 20, 2020, BCS dismissed Ms. Brown's informal complaint at BCS Case No. 3724939. (PGW Exhibit 3).
7. Ms. Brown's current gross monthly household income is \$2,800 which she receives from her employment. (N.T. 11).
8. Ms. Brown's household size consists of herself. (N.T. 11-12).
9. Since August 2015, Ms. Brown has made a total of four payments on her account totaling \$1,081.08. (N.T. 25; PGW Exhibit 2).

10. On August 21, 2015, Ms. Brown made a payment for \$241; on October 12, 2015, she made a payment for \$120.02; on July 14, 2017, she made a payment for \$240.02; and on March 11, 2019, she made a payment for \$480.04. (N.T. 30; PGW Exhibit 2).

11. Ms. Brown's total outstanding balance at the time of the hearing was \$12,599.91. (PGW Exhibit 2, p. 3).

12. Ms. Brown's total outstanding balance is comprised of CRP arrears in the amount of \$4,509.62. (N.T. 27).

13. In order to be placed on a PGW-issued payment arrangement, PGW requires that Ms. Brown would need to provide an upfront payment of \$6,299.95 (half of the account balance of \$12,599.91), then the remaining balance would be subject to a payment arrangement, based on Ms. Brown's income, of a budget amount of \$206 plus \$263 towards arrears for a total of \$469 per month for 24 months. (N.T. 32-33).

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

To satisfy this burden, a complainant, as the proponent of the request for relief, must show the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence 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).

In the instant matter, Complainant requests a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. Chapter 14 provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(a) of the Public Utility Code reads 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.

66 Pa.C.S. § 1405(a). 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:

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

66 Pa.C.S. § 1405(b)(3). Ms. Brown's gross monthly household income of \$2,800 for a household size of one exceeds 250% of the Federal poverty level but does not exceed 300% of the Federal poverty level.³ Pursuant to the Act, the Complainant's household income would make her eligible for a twelve-month payment arrangement to extinguish her outstanding balance, absent any other restrictions in the Act.

However, the Act explicitly excludes a portion of Ms. Brown's total outstanding balance from being the subject of a payment arrangement issued by the Commission. 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, \$4,509.62, cannot be the subject of a payment arrangement approved by the Commission. *Id.*; also see, *Maxwell v. Phila. 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, \$8,090.29,⁴ 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.

³ See, *Federal Register*, Vol. 85, No. 12, p. 3060 (January 17, 2020) (providing that a one-person household with a gross monthly household income of \$2,683 is at 250% of the Federal poverty level and one-person household income of \$3,190 is at 300% of the Federal poverty level). Under the 2021 guidelines, the Complainant's gross monthly household income would also be categorized as more than 250% and less than 300% of the Federal poverty level. *Federal Register*, Vol. 86, No. 19 at 7732 (February 2, 2021).

⁴ The total outstanding balance (\$12,599.91) – CRP arrears (\$4,509.62) = \$8,090.29 (non-CAP arrears).

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 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. Phila. 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. Phila. 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 sixty-five (65) months, Ms. Brown made only four payments: two payments in 2015, one payment in 2017, and one payment in 2019. *See* PGW Exhibit 2. On August 21, 2015, Ms. Brown made a payment for \$251; on October 12, 2015, she made a payment for \$125.00; on July 14, 2017, she made a payment for \$250.00; and on March 11, 2019, she made a payment for \$480.04. Ms. Brown made no payments in 2016, 2018, and 2020. Further, Ms. Brown's total outstanding balance at the time of the hearing was \$12,599.91. (PGW Exhibit 2).

Based on the Complainant's poor payment history (four payments over 65 months) and 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. Phila. 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. F-2020-3022061 is denied.

2. That the docket at Docket No. F-2020-3022061 be marked closed.

Date: March 16, 2021

_____/s/
Kailey B. Maguire
Special Agent