

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tylena Myers	:	
	:	
v.	:	C-2021-3028982
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed by a customer of a water company who alleges that the company incorrectly billed her, instead of her landlord, for charges caused by a significant water leak at the service address. The customer also requests a Commission-issued payment arrangement for her portion of the bill to have water service turned back on. The complaint will be dismissed because the customer did not meet her burden of proving that the company violated any provision of the Public Utility Code, a Commission regulation or order, or a Commission-approved tariff of the company, as it relates to the billing. The customer also did not meet her burden of proving that discretion is warranted to issue the Complainant a second Commission payment arrangement.

HISTORY OF THE PROCEEDING

On October 5, 2021, Tylena Myers (“Complainant”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania-American Water Company (“PAWC” or “Company”) alleging that there are incorrect charges on her bill. Specifically, Ms. Myers avers that she was improperly charged for usage as a result

of a significant water leak at the service address that occurred in a detached garage to which she, as a tenant, did not have access. As relief, Complainant requests that PAWC be directed to remove the charges on her bills related to the water leak, rebill the property owner/landlord for these charges, and provide her a payment arrangement for the remaining portion of the bills.

On October 27, 2021, PAWC timely filed an answer in which it admitted that Complainant's service was shut off for non-payment for an outstanding balance that exceeds \$29,000. The Company denied that the balance on Complainant's account is incorrect as it was based on actual meter readings. Further, the Company averred that it properly billed Complainant for the metered usage in accordance with its Commission tariff where the leak occurred on the customer's side of the service line and Complainant was the ratepayer of record. The Company also averred that Complainant is not entitled to a Commission payment arrangement stating that Complainant made only two payments for service in the past twenty-four months. The Company requested that the complaint be dismissed.

On October 27, 2021, a Call-In Telephone Hearing Notice was issued scheduling a hearing on December 14, 2021, at 10:00 a.m., and assigning me as the presiding officer. On October 28, 2021, a Prehearing Order was issued which provided certain hearing information and rules that would govern the proceeding.

On December 14, 2021, the hearing convened as scheduled. Ms. Myers appeared *pro se* and testified in support of her complaint. She did not offer any exhibits. Mr. Michael A. Gruin, Esquire, appeared on behalf of PAWC and presented the testimony of one witness, who sponsored six exhibits, all of which were admitted into the record. These exhibits are:

- Exhibit 1. Account Statement from 2/4/2019 to 11/21/2021 . (1 page)
- Exhibit 2. Customer Interaction Records (26 pages)
- Exhibit 3. Four (4) Letters to Complainant from PAWC (4 pages)
- Exhibit 4. Termination Notice dated 7/26/2021 (3 pages)
- Exhibit 5. Payment Agreement Summary (1 page)
- Exhibit 6. Selected PAWC Tariff Rules (2 pages)

On December 22, 2021, a 33-page hearing transcript was filed. The record closed on this date. The complaint is ready for disposition. For the reasons discussed below, Ms. Myers' complaint will be denied and dismissed.

FINDINGS OF FACT

1. The Complainant is Tylena Myers.
2. The Respondent is Pennsylvania-American Water Company.
3. Respondent has provided water and wastewater services to the Complainant, who is the ratepayer of record, beginning on April 12, 2017. Exhibit 1.
4. The service address is 899 Stirling Street, Coatesville, Pennsylvania. Tr. at 8; Exhibit 1.
5. The service address is a single-family house on a corner lot with a "very large yard" and detached garage. Tr. at 8.
6. The detached garage on the service property is "down a little bit" from the house and was estimated by Complainant to be located about 60 to 100 feet from the residence. Tr. at 8-9.
7. The Complainant and her ex-boyfriend signed a lease agreement to rent the house at the service address, and initially both resided there together with their adult children, and occasionally with another adult family member. Tr. at 9.
8. The Complainant's lease agreement with her landlord does not include access to the detached garage; the landlord told the Complainant that a key to the locked garage would not be provided because the garage "needs to be condemned." Tr. at 7.

9. Sometime “between February and March of 2019” Complainant’s dog ran away and while trying to locate her dog, Complainant walked by the garage and saw an influx of water coming from the bottom of the locked garage door. Tr. at 7, 11.

10. Upon discovering the influx of water coming from the garage, Complainant immediately called the property manager; however, the property manager was away at the time and did not come to the garage to inspect it until two or three days after Complainant’s call. Tr. at 7.

11. Exhibit 1 is Complainant’s account history for the service address from February 14, 2019 to November 11, 2021, and reflects the Company’s charges for services during each billing period, meter read information, payments made and the running balance on the account. Tr. at 14; Exhibit 1.

12. Exhibit 1 shows that there were three billing periods of higher than normal consumption that generated the charges that are being disputed in this complaint. Tr. at 15.

13. The first billing period in dispute ended February 14, 2019; Complainant was billed for 284,000 gallons of consumption, and charged \$3,249.24 for water and \$3,976.67 for wastewater, for a total bill of \$7,225.91. Tr. at 15; Exhibit 1.

14. On February 21, 2019, a PAWC field service representative confirmed the meter read for the first billing period in dispute by taking an actual meter read at the service address. Tr. at 26.

15. On February 25, 2019, PAWC sent Complainant the bill and a “high usage letter” which: alerted Complainant that PAWC noticed that Complainant’s water usage was considerably higher than normal; advised Complainant that she should check the property for leaks as soon as possible to prevent recurring high bills; directed Complainant to its website for more information on how to check for leaks; and advised Complainant that

if she could not determine the cause of the leak, that she could contact PAWC's customer service center for assistance. Tr. at 17-18; Exhibit 3.

16. Complainant did not contact PAWC following the 2/25/2019 bill or high usage letter.

17. The second billing period in dispute is for service from February 15, 2019 through March 14, 2019; Complainant was billed for 366,000 gallons of consumption, and charged \$4,183.19 for water and \$5,122.20 for wastewater, for a total bill of \$9,305.39. Tr. at 15; Exhibit 1.

18. On March 15, 2019, PAWC sent Complainant a second "high usage letter" alerting Complainant of considerably higher than normal water usage, and provided the same instructions and advice as the 2/25/2019 "high usage letter" referred above in paragraph number 15. Tr. at 18; Exhibit 3.

19. On April 1, 2019, Complainant contacted customer service at PAWC about her high bills and explained: that someone left water on and running in the garage at the service address to which she does not have any access; that her landlord filed a police report about the incident; that her landlord would be contacting PAWC;¹ that her landlord would be repairing the leak; and that she is not paying the bill. Tr. at 8, 18-19; Exhibit 2.

20. On April 1, 2019, during Complainant's phone call to PAWC, Complainant did not request that service be discontinued. Tr. at 8; 18-19; Exhibit 2.

21. The third billing period in dispute is for service from March 15, 2019 through April 11, 2019; Complainant was billed for 176,000 gallons of consumption, and Complainant was charged \$2,019.57 for water and \$2,490.46 for wastewater, for a total bill of \$4,510.03. Tr. at 15; Exhibit 1.

¹ Complainant gave PAWC permission to speak to her landlord and/or property manager about the high usage on her account. Tr. at 8, 18; Exhibit 2.

22. On April 16, 2019, PAWC sent Complainant a third “high usage letter” alerting Complainant of considerably higher than normal water usage, and provided the same instructions and advice as the two previous “high usage letters” dated 2/25/2019 and 3/15/2019, referred above in paragraph numbers 15 and 18. Tr. at 18; Exhibit 3.

23. On April 25, 2019, Complainant contacted PAWC and stated that her landlord and a plumber were at the service address the week before, and that she thinks the leak is fixed, but that she will have the landlord call PAWC to confirm this; she again reiterated her permission for PAWC permission to talk to her landlord. Tr. at 27; Exhibit 2.

24. On April 26, 2019, the landlord called PAWC and stated that a plumber repaired the leak on April 11, 2019. Exhibit 2.

25. The billing period from April 11, 2019 to May 14, 2019, reflects a considerable decrease in consumption from the prior three billing periods; Complainant was billed for 9,000 gallons of consumption,² and charged \$117.86 for water and \$136.21 for wastewater for a total bill of \$254.07; this billing period is not in dispute. Tr. at 15-16; Exhibit 1.

26. On May 14, 2019, PAWC gave Complainant a courtesy “leak adjustment” and credited her account \$1,252.62 for water and \$1,536.68 for wastewater, for a total credit of \$2,789.30. Tr. at 15-16, 17; Exhibit 1.

27. The subsequent billing periods following the April 11, 2019 to May 14, 2019 billing period reflect a usage which ranged between 5,000 and 24,000 gallons, and are not in dispute. Tr. at 16; Exhibit 1.

² Mr. Todd Haslup, a customer compliance supervisor employed by PAWC, testified that the entry on Exhibit 1 dated May 14, 2019 for this billing period shows 577,000 gallons of consumption, but that the correct number should be 9,000 gallons. Mr. Haslup explained that 577,000 gallons represents a total of the 9,000 gallons consumed during this billing period and the number of gallons credited to her account as part of the courtesy adjustment, also made on May 14, 2019. Tr. at 15-16; Exhibit 1.

28. Exhibit 1, Complainant's account history for the service address from February 14, 2019 to November 11, 2021, reveals that no late payment fees were billed even though only seven payments were made over this approximately 33-month period. Exhibit 1.

29. Exhibit 6 includes a copy of Tariff Rule 4.9 of PAWC's Commission approved tariff which provides that the customer is responsible to have the service pipe repaired if there is a leak. Tr. at 22; Exhibit 6.

30. Exhibit 6 includes a copy of Tariff Rule 15.1 of PAWC's Commission approved tariff which provides that the Company is not responsible for any leaks on the customer's internal plumbing or any kind of fixture. Tr. at 22; Exhibit 6.

31. In 2018, Complainant and PAWC entered into three payment agreements on the following dates and account balances:

- (1) on 6/25/2018 for a balance of \$560.04;
- (2) on 8/21/2018 for a balance of \$803.58;
- (3) on 10/23/2018 for a balance of \$1,102.48.

Complainant defaulted on all the above payment agreements. Tr. at 21; Exhibit 5.

32. On November 26, 2019, Complainant made a payment in the amount of \$100; no payment was made thereafter until service was shut off in July of 2021. Tr. at 17; Exhibit 1.

33. On February 14, 2020, the Commission issued Complainant a payment arrangement on a balance of \$20,574.68; payment was to begin on March 10, 2020, in the amount of \$328 (budget amount) plus \$343 (arrears) for a monthly total of \$671. Tr. at 21; Exhibit 5.

34. At the time of the February 2020 Commission payment arrangement, Complainant's gross monthly income was \$3,273.33. Exhibit 5.

35. Complaint defaulted on the February 2020 Commission-issued payment arrangement. Tr. at 21; Exhibit 5.

36. Sometime in May 2020, Complainant moved out of the service address but the account remained in her name while four other adults continued to reside at the service address including her ex-boyfriend, Complainant's two adult children and an adult niece. Tr. at 9, 11.

37. On July 27, 2021, service was shut off for non-payment. Tr. at 19; Exhibit 4.

38. On July 30, 2021, Complainant made a payment in the amount of \$498.37 and service was subsequently restored. Tr. at 19-20; Exhibit 1.

39. On August 10, 2021, PAWC and Complainant entered into a payment agreement on a balance of \$29,397.70; payment was to begin on September 7, 2021, in the amount of her current bill plus \$489 towards arrears. Tr. at 21; Exhibit 5.

40. On October 4, 2021, service was shut off for non-payment, and remained off at the time of the hearing. Tr. at 7, 8, 19.

41. Immediately following the shut off of service on October 4, 2021, Complainant has been continually trying to get service turned back on. Tr. at 8; Exhibit 2.

42. Complainant's gross income is \$2,500 per month, and the other adults residing at the service address either do not have an income, do not reside there full-time, or Complainant did not know their income. Tr. at 8, 10.

43. Following the repair of the leak in April 2019, and applying the company leak adjustment credit, the outstanding balance was \$18,966.70. Exhibit 1.

44. At the time of the hearing, the total outstanding balance was \$30,761.14. Tr. at 16; Exhibit 1.

DISCUSSION

Burden of Proof

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701.

As the proponent of a rule or order, a complainant bears the burden of proof by a preponderance of the evidence—i.e., by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. 66 Pa. C.S. § 332(a); *Se-Ling Hosier v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa. C.S. § 704; *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Id.*

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 utility. 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). 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).

Ms. Myers, as the proponent of a rule or order, bears the burden of proof in this proceeding.

Billing dispute

There is no dispute that Complainant's account history demonstrates that in 2019, there were three billing periods of considerably higher than normal consumption that generated significant charges that are the subject matter of this complaint. In the billing period ending February 14, 2019, Complainant was billed for 284,000 gallons; and in the following two billing periods, Complainant was billed for 366,000 gallons and 176,000 gallons respectively. Following the reported repair of the leak by the landlord on April 11, 2019, consumption decreased dramatically and ranged between 5,000 and 24,000 gallons. Tr. at 15-16; Exhibit 1.

As to the three high bills, Ms. Myers raises two claims: (1) that PAWC should bill her landlord, not her, for the charges related to the leak; and (2) that PAWC should have automatically shut off her water when consumption reached so high during the first high billing period in dispute.

First, Ms. Myers argues that PAWC is incorrectly holding her, instead of her landlord, responsible for the three high bills at issue. Ms. Myers contends that since these three high bills resulted from a significant water leak at the service address that occurred in a detached garage to which she, as the tenant, never had any access, PAWC should not hold her responsible. Thus, as relief, Complainant requests that PAWC be directed to remove the charges on her bills related to the water leak, and rebill the landlord, who should be held responsible for these charges.

PAWC did not challenge Complainant's credibility as to her testimony that she did not have access to the detached garage where the leak occurred. Indeed, I find Complainant's testimony credible in this regard. Of note, the Company's customer contact records shows that the landlord confirmed through various phone calls to PAWC that the garage

was the location of the leak and it occurred on the customer's side of the service line. Exhibit 2. Further, Ms. Myers does not challenge the accuracy of the bills or that the leak occurred on the customer's side of the service line. Rather, Ms. Myers challenges who PAWC should bill for the charges at issue.

PAWC contends that it properly billed Complainant for the metered usage since the Complainant is the customer and ratepayer of record. PAWC also presented PAWC Tariff Rule 4.9 (providing that the customer is responsible for the water consumption that passes through the meter attributed to a leak); and Rule 15.1 (providing that the Company is not responsible for any leaks on the customer's side of the service line). Tr. at 22; Exhibit 6.

I agree that the evidence produced at the hearing supports a conclusion that PAWC properly billed Ms. Myers in accordance with Commission regulations and the Company's tariff. There is no dispute that Ms. Myers is the sole customer of record. Tr. at 14; Exhibit 1. There is no evidence that the landlord is a customer. There is also no dispute that the service address is a single-family residence. Tr. at 8. The Company's tariff provides that the customer is responsible for the water consumption that passes through the meter attributed to a leak. Therefore, the record support the finding that PAWC properly billed Ms. Myers.

I acknowledge that during the hearing Ms. Myers expressed her frustration with the response of her landlord to the leak, which frustration is understandable. Of note, Ms. Myers may have a cause of action in civil court under landlord-tenant laws regarding the contractual provisions of her lease. However, the Commission has no jurisdiction to determine civil contractual disputes between landlords and tenants.³ The Commission lacks jurisdiction over private contractual disputes. *Adams v. Pa. Pub. Util. Comm'n*, 819 A.2d 631 (Pa. Cmwlth. 2003). The Commission only has jurisdiction to determine whether the utility is acting in compliance with the provisions of the Code, Commission regulations and orders and the Company-approved tariff.

³ This decision should not be construed as an opinion on the merits of any civil suit which must, of course, be determined in civil court.

Second, although not specifically raised in her formal complaint, Ms. Myers questioned at the hearing why PAWC did not automatically shut off her water immediately when consumption reached 366,000 gallons during the first billing period in dispute. *See, e.g.*, Tr. at 23-24. Ms. Myers seems to argue that this would have alerted her to the high usage and perhaps prevented recurring high bills. However, Mr. Haslup testified that PAWC must follow the Code, Commission regulations and orders, and its Commission-approved tariff prior to discontinuing or terminating service to a customer, including *inter alia*, providing adequate notice to the customer. *Id.*

It is clear that PAWC, in order to terminate a customer's service, must follow the Code, Commission regulations and orders and its Company tariff as to the appropriate pre-termination, termination, and post termination procedures. *See, e.g.*, Chapter 56 of the Commission Regulations, 52 Pa. Code §§ 56.81- 56.100 (relating to termination procedures). Mr. Haslup further explained that the customer would have to request water be shut off unless there is a safety issue, which the company did not find in this instance.⁴ Tr. at 24. Additionally, the record reveals that when Ms. Myers contacted PAWC on April 1, 2019 about the high bills, she did not request that her service be discontinued. At the time of this phone call, Ms. Myers already received the first two high bills, and she was aware that the leak had not been repaired yet by her landlord. Tr. at 8, 18-19; Exhibit 2. Therefore, I cannot conclude that the record supports Complainant's argument that PAWC should have terminated service without notice.

Further, PAWC also argued that it properly handled notice of the high bills in accordance with Commission regulations and the Company's tariff. Tr. at 29. Commission regulations require a public utility to render a bill once every billing period to every residential customer in accordance with approved rate schedules, which occurred here. 52 Pa. Code § 56.11(a). Additionally, PAWC must comply with the Code's requirement that obligates the

⁴ *See, e.g.*, 52 Pa. Code § 56.98 (providing that a public utility may immediately terminate service where the actions by the customer violate tariff provisions on file with the Commission which endanger the safety of a person.) *Also cf. Lynch v. PAWC*, F-2015-2468979, at 33, n.19 (Opinion & Order entered Jun. 30, 2016), wherein the Commission noted that "[t]he record in this case indicates that as of the close of the record, the Complainant still had not repaired the leak and her meter was registering over 100,000 gallons of usage per month due to the service leak."

Company to provide reasonable service under 66 Pa.C.S. § 1501 (providing that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service . . .”).

The record shows that, on February 21, 2019, in order to confirm the abnormally high usage, a PAWC field service representative took an actual meter reading. Four days later, on February 25, 2019, PAWC issued the first high bill (\$7,225.91) to Complainant. Further, by separate written notice dated February 25, 2019, PAWC alerted Ms. Myers that Complainant’s water usage was considerably higher than normal; advised her that she should check the property for leaks as soon as possible to prevent recurring high bills; directed her to its website for more information on how to check for leaks; and advised her that if she could not determine the cause of the leak, that she could contact PAWC’s customer service center for assistance. Tr. at 17-18; Exhibit 3. Unfortunately, the evidence showed that Complainant did not contact PAWC after receiving the first high bill or in response to the February 25, 2019 written notice of high usage. Complainant also did not immediately contact PAWC after receiving the second high bill or second written notice of high usage. This bill and written notice were issued on March 15, 2019, for the billing period ending March 14, 2019. Ms. Myers first contacted PAWC on April 1, 2019 to address this matter.

Ms. Myers does not contend that she did not receive her bills or the written notices. The Complainant also does not raise the timeliness of the high bills. For example, in *McKay v. West Penn Power Co.*, C-2013-22367239 (Opinion and Order entered Mar. 12, 2014), the Commission found that the utility provided unreasonable service where it waited over two months before issuing the customer a bill based on an actual meter reading that was more than ten times the readings normally obtained at the service address. The Commission found that the company’s untimeliness in advising the customer about the high reading denied the customer the opportunity to reduce his consumption. However, in the instant case, the evidence shows that the bills and written notices were timely issued.

Therefore, after careful consideration of the evidence of record, I cannot conclude in the instant case that PAWC provided unreasonable service in its handling of the notice of the high bills. I cannot cite to any further requirement imposed by Commission

regulations or company tariff that PAWC did not meet in this regard. The record evidence shows that timely bills and written notices alerted Ms. Myers to the higher consumption. Further, the written notices provided information on how Ms. Myers could check for leaks and if Complainant could not locate such, she could contact PAWC for assistance.

Payment arrangement

Next, Complainant seeks a payment arrangement for her “portion” of the bill--i.e., the total outstanding balance of \$30,761.14 minus the charges related to the leak. *See*, Complaint at 2, ¶ 4 (wherein Ms. Myers states, “I would like a reasonable payment agreement for MY portion of the bill.”) (capitalization in original). *Also see*, Complaint at 4, ¶ 5 (wherein Complainant requests that PAWC be directed to bill the owners of the property for the leak-related charges and bill her the remaining portion). Ms. Myers did not specify the amount she wants removed from her account, or the amount she contends is her portion of the outstanding bill. However, the account history shows that the three high bills that Ms. Myers disputes, inclusive of the leak credit, total \$18,252.03.⁵ When this amount is subtracted from the total outstanding balance (\$30,761.14), the result is \$12,509.11. Ms. Myers does not dispute that this amount is unrelated to the leak and was accumulated due to non-payment.

The Responsible Utility Customer Protection Act, as codified in Chapter 14 of the Code (Chapter 14), at 66 Pa.C.S. §§ 1401-1419, applies to complainants alleging inability to pay and requesting a Commission-ordered payment arrangement. A “payment arrangement” is defined as: “[a]n agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.” 66 Pa. C.S. § 1403 (definitions, “payment arrangement”).

⁵ This is calculated as follows: $\$7,225.91 + \$9,305.39 + \$4,510.03 = (\$21,041.33) - \$2,789.30$ (leak credit) = \$18,252.03.

However, as discussed above, this decision does not direct PAWC to remove the disputed charges. Therefore, any consideration of granting a payment arrangement needs to be for the total outstanding balance of \$30,761.14.

Chapter 14 provides strict guidelines that the Commission must follow, including the length and number of payment arrangements it may issue. 66 Pa.C.S. § 1405(b), (d). Further, customers seeking a payment arrangement must also demonstrate some evidence of a good faith effort to pay their utility bills. *Hewitt v. PECO Energy Co.*, F-2011-2273271 (Opinion and Order entered Sept. 12, 2013) (*Hewitt*). Additionally, there must be a showing that the customer has the means to pay for the service. *Smith v. PPL Electric Utils. Corp.*, C-2015-2499601 (Final Order entered Nov. 17, 2015) (*Smith*); *Buchanan v. Pike County Light & Power Co.*, F-2009-2137873 (Opinion and Order entered Nov. 19, 2011) (*Buchanan*).

Initially it should be noted that the Commission has the authority to order a payment arrangement for a customer whose service was lawfully terminated for non-payment. *Crawford v. Nat'l Fuel Gas Distrib. Corp.*, C-20066348 (Opinion and Order entered Dec. 6, 2007); *Rogito v. UGI Utils. Inc.*, F-02263457 (Opinion and Order entered Dec. 3, 2008). Further, the evidence supports a finding that, even though service has been terminated since October 4, 2021, Ms. Myers is a “customer” as defined by Chapter 14. The term “customer” is defined by Chapter 14 as “[a] natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service . . . and includes a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location . . .” 66 Pa.C.S. § 1403 (definitions, “customer”). Both Ms. Myers’ testimony and PAWC’s customer contact records show that Ms. Myers, whose name the account is listed, has repeatedly sought to have service reconnected at the same location since service was terminated. Tr. at 8; Exhibit 2.

Regarding the number of payment arrangements the Commission may issue, Chapter 14 limits the Commission to grant only one payment arrangement with limited exceptions. 66 Pa.C.S. § 1405(d). The exceptions will be reviewed next since the record shows

that Ms. Myers was previously granted a Commission payment in February 2020 on which she has defaulted.

Following a default on the first Commission-issued payment arrangement, the customer may receive Commission-issued relief in the form of: (1) a second or subsequent payment arrangement only if the customer demonstrates a “change in income,” or (2) a reinstatement or extension of the recently defaulted payment arrangement only if the customer demonstrates a “significant change in circumstance.” 66 Pa.C.S. § 1405(d), (e).

A “change of income,” is defined as “*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 (definitions, “change of income”). Thus, the household income level needs to be determined. The Act defines “household income” as “[t]he combined gross income of all adults *in a residential household* who benefit from the public utility service.” 66 Pa.C.S. § 1403 (definition, “household income”) (emphasis added).

Ms. Myers testified that at the time of the hearing that, although she moved out of the service address in May 2020, four other adults continue to reside there including her ex-boyfriend, Complainant’s two adult children and an adult niece. Tr. at 9, 11. Since these adults are part of the residential household that benefits from the service, it is clear that their income, if any, can be considered part of the “household income.” However, there was no testimony that any of these adults contributed any income to the household. *Id.* Therefore, the only income that potentially can be considered is the income of Ms. Myers, who testified her gross income is \$2,500 per month. Tr. at 10.

However, ordinarily, the customer who seeks a Commission payment arrangement also resides at the service address; therefore, there is no doubt that the customer’s income can be considered part of the “household income”. In this instance, Ms. Myers no longer resides, or indicated any intent to reside, at the service address at which service is sought to be restored. Therefore, this appears to raise the question whether Ms. Myers is part of the

“household” and hence, whether her income is that of an adult “*in a residential household* who benefits from the public utility service.” In other words, Ms. Myers is clearly the customer, but is she part of the household? While the Act defines “household income”, it does so without defining “household”. Consider then, that “household” has been defined as follows: (1) by the U.S. Census Bureau as “all the people who occupy a housing unit”;⁶ (2) by *Black’s Law Dictionary* as “[a] group of people who dwell under the same roof”;⁷ and (3) by *Merriam-Webster Dictionary* as “those who dwell under the same roof and compose a family”.⁸ Common to all the definitions of “household” is the reference to dwelling under the “same roof” or “occupying” the same unit. However, in this instance, Ms. Myers does not dwell under the same roof, or occupy the same housing unit, with the other adults at the residence at which service is sought to be restored.⁹

Nonetheless, assuming *arguendo* that it is reasonable to find that the customer, Ms. Myers, is part of the household with the other four adults residing at the service property, if her income is considered, Ms. Myers has demonstrated a “change in income.” Ms. Myers’ gross monthly income at the time of the February 2020 Commission payment was \$3,273.33. Exhibit 5. At the time of the hearing, Ms. Myers monthly gross income decreased to \$2,500, which is a decrease of approximately 24% ($\$3,273.33 - \$2,500 = \$773.33$; $\$773.33 / \$3,273.33 = 23.6$). Thus, the Commission may, but is not required, to issue Complainant a second payment arrangement. Further, pursuant to the Act, the Complainant's household income of \$2,500 would

⁶ See, *Federal Register*, Vol. 87, No. 14 at 3315 (January 21, 2022); also available at <http://aspe.hhs.gov/poverty>; and www.census.gov/programs-surveys/cps/technical-documentation/subject-definitions.html (definition of “household”) (last visited 3/21/2022).

⁷ *Black’s Law Dictionary* (11th ed. 2019), definition of “household”.

⁸ <https://www.merriam-webster.com/dictionary/household> (last visited 3/21/2022).

⁹ It should also not be noted that “household income” includes all the adults in the household “who benefit from the public utility service.” 66 Pa.C.S. § 1403. Ms. Myers testified that she sought service so her ex-boyfriend and family could have water service, which arguably benefits her in knowing her family has access to water service. Tr. at 8. However, the determination whether Ms. Myers “benefits from the public utility service” within the meaning of the Act need not be determined herein given Ms. Myers lack of means to afford service, as discuss further above.

make her eligible for a five-year payment arrangement to extinguish her outstanding balance absent any other restriction in the Act. 66 Pa.C.S. § 1405(b)(1).¹⁰

However, under the circumstances in the instant case, including the very large size of the outstanding bill and Complainant's current income, I am constrained to conclude that discretion is not warranted at this time to issue Complainant a payment arrangement. Complainant has not demonstrated a good faith effort to pay her bill. More significantly, Complainant has not demonstrated that she has the means to afford a payment arrangement. Therefore, it cannot be deemed appropriate or in Complainant's best interest to award a payment arrangement that she is likely to default.

As the Commission explained, "the Commission has a responsibility to exercise its authority very judiciously when a utility has lawfully terminated a customer for nonpayment. Specifically, this Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills" *Crawford* at 15-16. *Also see, Hayes v. Phila. Gas Works*, C-2017-2634526 (Opinion and Order entered Oct. 1, 2018), *citing Hewitt*. For example, the Commission may decline to issue a payment arrangement because of a complainant's poor payment history or lack thereof and an inability to keep prior payment arrangements with the utility. *See, e.g., Dorsey v. Phila. Gas Works*, F-2012-2313679 (Opinion and Order entered Nov. 22, 2013).

In the instant case, discretion is not warranted in granting Ms. Myers a payment arrangement for the following reasons: (1) since 2018, Complainant has defaulted on four company-issued payment arrangements, three of which were provided prior to the charges stemming from the leak at issue; (2) the account demonstrates a poor payment history in that over a 33-month period, a total of only seven payments were made; (3) the outstanding balance exceeds \$30,000; and (4) a large portion of the outstanding balance, \$12,509.11, is unrelated to

¹⁰ Section 1405(b) provides for a maximum repayment term of five years for customers with a household income level not exceeding 150% of the Federal poverty level. Ms. Myer's income is well below 150%. *See, Federal Register*, Vol. 87, No. 14 at 3316 (January 21, 2022) (providing that a five-person household with a gross monthly household income of \$4,059 is 150% of the Federal poverty level). The Federal poverty guidelines are *also available at* <http://aspe.hhs.gov/poverty>.

the leak, not contested by Ms. Myers, and accumulated due to non-payments. Tr. at 29; Exhibit 1.

Further, and more significantly, I am also constrained to conclude that discretion is not warranted in granting a payment arrangement because the evidence shows that Complainant does not have the means to maintain payments; hence, she is likely to default. Ms. Myers testified that she entered the last company payment arrangement knowing that she could not afford the monthly payments term of \$489.00 (arrear) plus her current bill, but that she did so in order that her family could have water service. Tr. at 8; Exhibit 5. Here, a five-year repayment term on a balance of \$30,761.14 would result in a monthly payment towards arrears alone of \$512.68. Further, Ms. Myers testified that she could not afford her current bills of anywhere from \$300 to \$600. *Id.* Thus, when the current monthly bill is added to the monthly arrearage term, this totals a range of \$812.68 to \$1,112.68,¹¹ an amount that Ms. Myers admitted she cannot afford. As explained by the Commission in denying a payment arrangement in similar circumstances, “Nor does it seem that [Complainant] possess[es] the means to pay for such services. . . . Reluctantly, we cannot support the BCS-recommended grant of a payment arrangement to [Complainant] when default seems inevitable.” *Thomas v. Nat’l Fuel Gas Distr.*, F-02144645 at 5-6 (Opinion and Order entered Dec. 4, 2008) (*Thomas*).

Similarly, the Commission has declined to set a payment arrangement where it is not in the customer's best interest because it is likely that the customer will default. *Hewitt*. As the Commission explained, “[g]iven the limitations in the [Public Utility] Code in Section 1405(d) on the number of payment agreements that the Commission may issue for a customer, issuing a payment agreement where the customer will likely default is not in the customer's best interest.” *Hewitt* at 11, n.4. In *Hewitt*, the Commission declined to grant a payment arrangement where the complainant, who had a “mixed” arrearage,¹² had a large outstanding balance of over \$15,000, a poor payment history, and an inability to keep prior company-issued payment

¹¹ The range was calculated as follows: $\$512.68 + \$300 = \$812.68$; and $\$512.68 + \$600 = \$1,112.68$.

¹² A customer whose arrearage is “mixed” refers to an arrearage which includes both customer assistance programs (“CAP”) arrears and non-CAP arrears. *Hewitt* at 7. The precise amounts of the CAP and non-CAP portions of Hewitt’s arrearage were not in the record. *Id.* at 7, n.5.

arrangements, thereby concluding that it was not in the customer's best interest to grant a payment arrangement. Also see, *Pickett v. Phila. Gas Works*, C-2014-2444967 (Opinion and Order entered Oct. 1, 2015) (finding that the complainant did not prove that a Commission-issued payment arrangement as in her best interest wherein the complainant who had mixed arrears had defaulted on several company-issued payment arrangements, had a poor payment history and substantial arrears); and *Orsky v. West Penn Power Co*, F-2019-3010301 (Final Order entered Dec. 20, 2019) (wherein the Commission declined to set a payment arrangement where the complainant had an outstanding balance of over \$15,000 which did not include a mixed arrearage, had defaulted on five company payment arrangements, had a poor payment history, and it was not in the customer's best interest to grant a payment arrangement where the customer was likely to default).¹³

Thus, since the Complainant has not met her burden that she has the means to maintain payments, it is appropriate to deny a payment arrangement at this time. *Smith, Thomas, Buchanan*. Of note, counsel for PAWC also acknowledged that Ms. Myers' situation was unfortunate and noted that the Company remains willing to continue to address the leak situation with her including perhaps providing some further adjustments to her account, providing information as to her eligibility for obtaining grants or working with her and her ex-boyfriend, who still resides at the address, to have service put in his name. See, e.g., Tr. at 28. I would encourage this continued cooperation.

CONCLUSIONS OF LAW

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

¹³ I note that relief in the form of a reinstatement or extension of the Commission defaulted payment arrangement is also not appropriate given Ms. Myers' inability to afford such, as well as she does not appear to be eligible for this relief. See, 66 Pa.C.S. § 1403 which defines a "significant change of circumstance" as a customer who defaulted because the customer's household has experienced: (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 customer's residence; or (4) an increase in the customer's number of dependents in the household.

2. To establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

3. The complainant seeking affirmative relief from the Commission has the burden of proving the complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

4. The Commission has no jurisdiction to adjudicate private contractual disputes such as civil contractual disputes between landlords and tenants. *Adams v. Pa. Pub. Util. Comm'n*, 819 A.2d 631, 635 (Pa. Cmwlth. 2003).

5. Complainant did not meet her burden of proving that the Company violated any provision of the Code, a Commission regulation or order, or a Commission-approved tariff of the company as it relates to Complainant's billing claim.

6. The Responsible Utility Customer Protection Act applies to complainants alleging an inability to pay and requesting a Commission payment arrangement. 66 Pa.C.S. §§ 1401-1419.

7. Customers seeking a payment arrangement must demonstrate some evidence of a good faith effort to pay their utility bills. *Hewitt v. PECO Energy Co.*, F-2011-2273271 (Opinion and Order entered Sept. 12, 2013).

8. The Responsible Utility Customer Protection Act authorizes the Commission to issue a payment arrangement for a customer but 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*, C-2017-2634526 (Opinion and Order entered Oct. 1, 2018); *Hewitt v. PECO Energy Co.*, F-2011-2273271 (Opinion and Order entered Sept. 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*, F-2012-2313679 (Opinion and Order entered Nov. 22, 2013).

10. The Commission may decline to issue a payment arrangement where it is not in the customer's best interest because it is likely that the customer will default. *Hewitt v. PECO Energy Co.*, F-2011-2273271 (Opinion and Order entered Sept. 12, 2013); *Picket v. Phila. Gas Works*, C-2014-2444967 (Opinion and Order entered Oct. 1, 2015); *Turner v. Phila. Gas Works*, C-2013-2388319 (Opinion and Order entered Jun. 9, 2014).

11. Complainant has not met her burden of proving that the Commission should exercise its discretion at this time and grant her a payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Tylene Myers against Pennsylvania-American Water Company at Docket No. C-2021-3028982 is denied and dismissed.

2. That the docket at Docket No. C-2021-3028982 be marked closed.

Date: March 22, 2022

_____/s/
Gail M. Chiodo
Administrative Law Judge