

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rosa Brown	:	
	:	
v.	:	C-2022-3032000
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses with prejudice the Formal 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. Also, this Initial Decision bars the Complainant from filing further informal or formal complaints related to the Complainant’s current outstanding balance, which currently exceeds \$18,000.

**HISTORY OF THE PROCEEDING**

On April 14, 2022, Rosa Brown (Complainant or Ms. Brown) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent) in which she requested a Commission-issued payment arrangement.

On May 9, 2022, PGW filed an Answer (Answer) which admitted in part and denied in part various material allegations of the Complaint. PGW alleged that on March 13, 2019, the Complainant's Customer Responsibility Program (CRP) agreement became inactive with a balance of \$8,274.10, of which, \$4,509.62 was CRP arrears. PGW admitted that it issued a 10-day shut off notice for the Complainant's gas service on March 23, 2022. PGW further alleged that in order to reinstate the Complainant's CRP agreement, a catch-up amount of \$4,240 was required. PGW requested the Complaint be dismissed.

By Hearing Notice dated May 12, 2022, an Initial Call-In Telephonic Hearing was scheduled for June 9, 2022, and the matter was assigned to me.

A Prehearing Order was issued on June 1, 2022, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On June 9, 2022, the hearing convened as scheduled. The Complainant 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, David Kauffman, a Customer Review Officer for PGW. Mr. Kauffman sponsored the following three (3) exhibits, which were admitted into the record without objection:

PGW Exhibit 1 – Statement of Account  
PGW Exhibit 2 – Screen shot, negotiated payment arrangement history  
PGW Exhibit 3 – BCS Decision on Informal Complaint

The record closed on June 22, 2022, upon the filing of the transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Rosa Brown, who resides at 1419 S. 56th Street, Philadelphia, Pennsylvania 19143 (Service Address). Tr. 5-6.

2. The 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 the Respondent's CRP with pre-program arrears of \$4,224.14. *Rosa Brown v. Phila. Gas Works*, Docket No. F-2020-3022061 (Opinion and Order entered April 21, 2021).

4. On March 13, 2019, Ms. Brown's CRP agreement became inactive with a balance of \$8,274.10, of which, \$3,944.56 was CRP arrears. Tr. 17; PGW Ex. 1.

5. On June 15, 2021, PGW provided Ms. Brown with a "PAR-21 payment arrangement" due to the COVID-19 shutoff moratorium, on which she defaulted. Tr. 19; PGW Ex. 2.

6. On October 13, 2021, Ms. Brown was provided a PGW-issued payment agreement, on which she defaulted. Tr. 19; PGW Ex. 2.

7. Since June 1, 2018, Ms. Brown has made a total of four payments on her account. Tr. 18; PGW Ex. 1.

8. On July 14, 2018, Ms. Brown made a payment for \$240.02; on March 11, 2019, she made a payment for \$480.04; and on September 29, 2021, she made payments of \$495.00 and \$930.00. Tr. 18; PGW Ex. 1.

9. Ms. Brown's total outstanding balance at the time of the hearing was \$18,254.58. Tr. 18; PGW Ex. 1.

10. Ms. Brown's total outstanding balance is comprised of CRP arrears in the amount of \$3,944.56. Tr. 17; PGW Ex. 1.

11. Ms. Brown's current gross monthly household income is \$2,480 which she receives from her employment. Tr. 6.

12. Ms. Brown has not experienced a significant change of circumstances beyond her control. Tr. 7.

13. Ms. Brown's household size consists of herself. Tr. 6.

14. Ms. Brown's current income makes her ineligible to reenroll in PGW's CRP. Tr. 20.

15. In order to reinstate the broken PGW-issued payment arrangement, PGW requires that Ms. Brown would need to provide a catch-up payment of \$6,784, then the remaining balance would be subject to a payment arrangement consisting of a budget amount of \$277 plus \$717 towards arrears for a total of \$994 per month for 60 months. Tr. 20-21.

16. In order to be placed on a new PGW-issued payment agreement, PGW requires that Ms. Brown would need to provide an upfront payment of \$9,127.29 (half of the account balance of \$18,254.58), then the remaining balance would be subject to a payment arrangement, based on Ms. Brown's income, of a budget amount of \$277 plus \$657 towards arrears for a total of \$934 per month for 24 months. Tr. 21-22.

17. On December 4, 2018, Ms. Brown filed a formal complaint against PGW seeking a Commission-payment arrangement for the same account and Service Address in the instant Formal Complaint. *Brown v. Phila. Gas Works*, Docket No. C-2018-3006416 (Order entered June 13, 2019).

18. The Commission denied the formal complaint of Ms. Brown, docketed at C-2018-3006416, because the majority of Ms. Brown's outstanding balance was comprised of CRP arrears, which cannot be the subject of a payment arrangement approved by the

Commission, and she had not made a good faith effort to pay her utility bills. *Brown v. Phila. Gas Works*, Docket No. C-2018-3006416 (Order entered June 13, 2019).

19. On August 17, 2020, Ms. Brown filed another formal complaint against PGW seeking another Commission-payment arrangement for the same account and Service Address in the instant Formal Complaint. *Brown v. Phila. Gas Works*, Docket No. F-2020-3022061 (Order entered April 21, 2021).

20. The Commission denied the formal complaint of Ms. Brown, docketed at F-2020-3022061, because the majority of Ms. Brown's outstanding balance was comprised of CRP arrears, which cannot be the subject of a payment arrangement approved by the Commission, and she had not made a good faith effort to pay her utility bills. *Id.*

#### 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). As a matter of law, 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. PUC 196 (Opinion and Order entered February 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (Opinion and Order entered October 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that 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); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

In the instant matter, the Complainant requests a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. 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. In this regard to the latter, 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 assistant program (CAP) rates:

(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 CAP rates, the portion of Ms. Brown's outstanding balance that is comprised of CRP arrears, \$3,944.56, 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)).

The remaining amount of non-CRP arrears is \$14,310.02, upon which the Commission can issue a payment arrangement. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013). However, the Commission is not required to do so, and may decline to do so if the Complainant exhibits a poor payment history, inability to pay, and/or likeliness to default. *Id.*; see also, *Getz v. Metro. Edison Co.*, Docket No. C-20142459964 (Final Order entered May 28, 2015). Therefore, even though 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 should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of 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); *Crawford v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007). A payment arrangement, which prevents service termination if the Complainant complies with it, is a privilege, not a right. *Mandell v. Duquesne Light Co.*, Docket No. C-20030234, (Opinion and Order entered March 17, 2004).

Here, the record does not support awarding the Complainant a payment arrangement. Ms. Brown has not experienced a significant change of circumstances beyond her control. Moreover, Ms. Brown has a poor payment history and has demonstrated an inability or unwillingness to comply with payment arrangements established by PGW. Since June 1, 2018, Ms. Brown has only made a total of four payments on her account and defaulted on both of the payment arrangements provided by PGW.

In addition, given the Complainant's financial circumstances, she is likely to default on any payment arrangement issued by the Commission, making it an exercise in futility. 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:

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(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

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66 Pa.C.S. § 1405(b)(2). Ms. Brown's gross monthly household income of \$2,480 for a household size of one exceeds 150% of the Federal poverty level but does not exceed 250% of the Federal poverty level.<sup>1</sup> Pursuant to the Act, the Complainant's household income would make her eligible for a 36-month payment arrangement to extinguish her outstanding balance, absent any other restrictions in the Act. Unfortunately, since the Complainant's outstanding balance is so high, this would mean she would still have to pay \$397.50 per month<sup>2</sup> *in addition to*

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<sup>1</sup> See, 87 Fed. Reg. 3315 (January 21, 2022); see also, <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>.

<sup>2</sup> \$14,310.02 ÷ 36 months = \$397.50.

her current usage bills and CRP arrears, which is doubtful she could afford. Accordingly, the Complainant's request for a Commission-issued payment arrangement will be denied.

Lastly, I will address the Complainant's apparent abuse and/or manipulation of the Commission's administrative process in order to avoid termination or payment of her utility bills.

The Commission has consistently held that a party can be precluded from filing additional formal or informal complaints if there is an abuse of the administrative process. *See, Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered August 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014); *see also, Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010). In *Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-20082019388 (Final Order entered July 28, 2009), the Commission precluded the filing of further complaints pertaining to the same account until the arrearage was paid in full after finding that Complainant had abused the system by using the Commission's procedures to prevent termination of service while receiving utility service and accruing a large outstanding balance. Similarly, in *Manu v. The Bell Telephone Company of Pennsylvania*, Docket No. F 09029141 (Final Order entered May 9, 1994), the Commission found an abuse of process had occurred and it precluded Complainants from filing further complaints, formal or informal, until their arrearages were paid in full. The factors to be considered as put forth in the *Argento's Pizza* case include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments.

Here, as was noted above, the Complainant has defaulted on two PGW-issued payment arrangements. Since 2018, the Complainant has filed three informal complaints and three formal complaints (following the denial of the informal complaints) with the Commission. In every complaint, Ms. Brown has sought a payment arrangement after receiving a notice of shut off for non-payment. The Commission has already denied both of Ms. Brown's prior formal complaints on the same grounds that I am denying the instant Formal Complaint – the

majority of Ms. Brown's outstanding balance was comprised of CRP arrears, which cannot be the subject of a payment arrangement approved by the Commission, and she has not made a good faith effort to pay her utility bills. *See Brown*, at Docket Nos. C-2018-3006416 and F-2020-3022061. Further, since June 1, 2018, Ms. Brown has only made a total of four payments on her account, which now has a total outstanding balance of \$18,254.58.

I conclude, based on the undisputed record evidence, that the Complainant is abusing the Commission's administrative due process and procedures to avoid payment and to delay the termination of her service due to non-payment. The Complainant has shown a pattern of filing numerous complaints with the Commission in order to avoid service termination, defaulting on company-issued payment agreements, and has a very poor payment history. As a result, PGW has been unable to obtain payment for its gas service due to applicable laws requiring it to provide a stay of termination while a dispute/complaint is pending before the Commission. 52 Pa. Code § 5.63(b).

By law, a public utility is entitled to receive payment for the service it provides, and the Complainant must pay the Respondent for the service she consumes. *Scaccia v. W. Penn Power Co.*, 55 Pa. PUC 637 (1982); *Kea v. Peoples Nat Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303, *Neal v. Phila. Gas Works*, Docket No. Z-00871874, (Final Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-08721758 (Opinion and Order entered April 8, 1988). The record in this case highlights a disturbing trend in Complainant's use of the Commission's informal and formal complaint procedures to avoid paying her gas bills while evading the company's termination procedures.

Due to the high amount of the Complainant's outstanding balance, and in order to prevent the unnecessary expenditure of any additional Commission resources, the Complainant will be prohibited from filing any further informal or formal complaints with the Commission

until such time as the current outstanding balance on her PGW account is paid in full. Further, PGW is authorized to terminate the Complainant's gas service upon issuance of a final order by the Commission in this case.

#### CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

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. The Complainant has failed to carry her burden of proof that she is eligible for a Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405.

11. The Commission may preclude a party from filing further informal or formal complaints when the party has abused the Commission's complaint procedures in order to avoid the termination of his or her service. *Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered August 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010); *Seidenstricker v. Metro. Edison Co.*, Docket No. F-20082019388 (Final Order entered July 28, 2009); and *Manu v. Bell Tel. Co. of Pa.*, Docket No. F 09029141 (Final Order entered May 9, 1994).

12. The Complainant has abused the administrative due process by filing multiple similar complaints, incurring a substantial outstanding balance, and evidencing a poor payment history, in an attempt to avoid termination and payment for services. *Sanford v. Phila. Gas Works*, Docket No. C-2019-3009831 (Final Order entered August 10, 2020); *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010); *Seidenstricker v. Metro. Edison Co.*, Docket No. F-20082019388 (Final Order

entered July 28, 2009); and *Manu v. Bell Tel. Co. of Pa.*, Docket No. F 09029141 (Final Order entered May 9, 1994).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Rosa Brown against Philadelphia Gas Works at Docket No. C-2022-3032000 is denied and dismissed with prejudice.

2. That Rosa Brown be, and hereby is, precluded from filing further complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on PGW Account No. 790792561 for gas service provided by Philadelphia Gas Works, until such time as the entire outstanding account balance is paid in full, and that, further, the filing of any complaint pertaining to the arrearages which are the subject of this proceeding shall be dismissed without further proceedings.

3. That Commission staff (including but not limited to the Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaints that Rosa Brown, or any person acting on her behalf, may attempt to file with the Commission, pertaining to PGW Account No. 790792561, until the entire outstanding account balance is paid in full.

4. That the filing of any other pleading in this case, concerning the same subject matter be, and hereby is, deemed not to stay implementation of this Order.

5. That Philadelphia Gas Works shall file a notice with the Commission, with a copy to all Parties to this proceeding, at Docket Number C-2022-3032000, within seven (7) days of the date that Ms. Brown's outstanding account balance is paid in full.

6. That the failure of Rosa Brown to pay all arrearages on her account (PGW Account No. 790792561), shall be, and hereby is, deemed to be grounds for termination of service upon issuance of a final order by the Commission in this case.

7. That a copy of this decision shall be served to the Bureau of Consumer Services and the Secretary's Bureau.

8. That Docket No. C-2022-3032000 be marked closed.

Date: September 16, 2022

\_\_\_\_\_/s/\_\_\_\_\_  
F. Joseph Brady  
Administrative Law Judge