

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held October 27, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
Stephen M. DeFrank, Vice Chairman
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Terri Williams

F-2021-3030122

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Terri Williams (Complainant or Ms. Williams), filed on August 12, 2022, to the Initial Decision (I.D.) of Special Agent Kailey B. Maguire, issued on July 25, 2022, in the above-captioned matter in which the Special Agent dismissed the Complainant's Formal Complaint (Complaint) because she failed to establish by a preponderance of the evidence that she is eligible for a subsequent Commission-issued payment arrangement or an extension of her prior one. The Complaint is a timely appeal from a decision by the Commission's Bureau of Consumer Services (BCS), which dismissed Ms. Williams' informal complaint because she did not

satisfy a prior Commission-issued payment arrangement.¹ Philadelphia Gas Works (PGW or Company) (collectively with the Complainant “Parties”) did not file Replies to Exceptions. For the reasons stated below, we shall deny the Complainant’s Exceptions, affirm the Initial Decision and dismiss the Complaint.

History of the Proceeding

On December 20, 2021, Ms. Williams filed the Complaint with the Commission against PGW in which she averred PGW was threatening to shut off her service or had already shut off her service and that there were incorrect charges on her bill. As relief, the Complainant requested to be placed back on her payment arrangement. As noted, the Complaint is a timely appeal from a decision by BCS, dated November 30, 2021, at BCS No. 3808583, which dismissed Ms. Williams’ informal complaint because Ms. Williams failed to comply with a prior Commission-issued payment arrangement.

On January 10, 2022, PGW filed an Answer to the Complaint asserting, *inter alia*, it issued a shut-off notice for the service at the Complainant’s residence. PGW denied there were incorrect charges on Ms. Williams’ gas service bill. In concluding its Answer, PGW requested dismissal of the Complaint.

On February 16, 2022, the Commission served a Corrected Telephonic Hearing Notice² to the Parties that established an initial telephonic hearing for

¹ The Complaint is an appeal of a decision of the Commission’s Bureau of Consumer Services, at Case No. 3765536. Appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

² On January 11, 2022, a Telephonic Hearing Notice was served on the Parties which had inadvertently scheduled the evidentiary hearing for Tuesday, March 2, 2022, instead of Tuesday, March 1, 2022

March 1, 2022, at 10:00 a.m. and assigned Kailey B. Maguire as Presiding Officer. On February 16, 2022, a Prehearing Order was served reminding the Parties of the date and time of the hearing and addressing, *inter alia*, the procedures applicable to the hearing, including the method by which one could obtain a continuance if needed.

On February 16, 2022, Ms. Williams sent an e-mail to Special Agent Maguire and the Company in which she requested a continuance of the March 1, 2022 hearing due to financial strain, as the Complainant wished to be given time to regain her financial footing. On February 22, 2022, the Special Agent e-mailed the Parties to ascertain PGW's position on the request. On that same date, counsel for PGW e-mailed the Complainant and the Special Agent stating that the Company did not object to the continuance request. Since the Company had no objection, initially, the Special Agent informally granted the Complainant's continuance request via e-mail.

On February 23, 2022, the Commission served a Telephonic Rescheduled Hearing Notice that established the initial telephonic hearing for April 5, 2022, at 10:00 a.m.

On February 24, 2022, the Special Agent served an Interim Order formally granting the Complainant's continuance request and informing the Parties that a new hearing date would be issued under separate cover.

On March 27, 2022, the Complainant sent the Special Agent and the Company an e-mail to request a continuance of the April 5, 2022 hearing due to continued financial hardship. Due to the level of detail included in Ms. Williams' e-mail regarding her financial situation and the inclusion of corresponding documentation, the Special Agent informed the Parties that the hearing would proceed as scheduled on April 5, 2022, at which point the information contained in the Complainant's e-mail could be further discussed in a more efficient manner.

The hearing convened as scheduled on April 5, 2022, at 10:00 a.m. Ms. Williams appeared *pro se*, testified on her own behalf, and offered three exhibits which were admitted into the record. The Company was represented by counsel who presented the testimony of one witness who sponsored six exhibits that were admitted into the record.

The record closed on April 26, 2022, upon receipt of the thirty-six-page telephonic hearing transcript.

In the Initial Decision, issued July 25, 2022, Special Agent Maguire dismissed the Complaint because the Complainant failed to establish by a preponderance of the evidence that she is eligible for a subsequent Commission-issued payment arrangement or an extension of her prior payment arrangement.

As noted, the Complainant filed Exceptions to the Initial Decision on August 12, 2022. PGW did not file Replies to Exceptions.

Discussion

A. Legal Standards

1. The Responsible Utility Customer Protection Act (Chapter 14)

The Responsible Utility Customer Protection Act, codified in Chapter 14 of the Public Utility Code (Code) at 66 Pa. C.S. §§ 1401 – 1419, applies to complainants alleging an inability to pay and requesting Commission-ordered payment arrangements. 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.

Section 1405(a) makes explicit the power of the Commission to investigate payment disputes between a public utility and its applicants and customers. It also makes explicit the Commission's authority to establish at least one payment arrangement per customer subject to the limitations of Section 1405.³ See 66 Pa. C.S. § 1405(a).

Section 1405(a) of the Code states as follows:

(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).

While Section 1405(a) generally authorizes the Commission to issue a payment arrangement for a customer, it does not require it. Thus, the issuance of a payment arrangement by the Commission pursuant to Section 1405(a) is an exercise of the Commission's discretion. See *Susan Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013) (*Hewitt*) at 11-12. We exercise such discretion judiciously, particularly in mixed-arrearage cases, out of concern for the rate burden to be borne by other customers due to a utility's uncollectible expense resulting from unpaid customer arrearages. See *Alfredo Caraballo v. PPL Electric Utilities Corporation*, Docket No. C-2017-2615246 (Order entered April 5, 2018) (*Caraballo*) at 16; see also 52 Pa. Code § 56.1 (assuring "adequate provision of residential public utility service . . . while protecting against rate increases for timely

³ The Commission's power to establish a payment arrangement is not limited by the fact that the customer previously received a utility-issued, as distinguished from a Commission-issued, payment arrangement. See *Chapter 14 Implementation, Reconsideration of Implementation Order*, Docket No. M-0004180F0002 (Order entered October 27, 2005).

paying customers resulting from other customers' delinquencies"). In exercising our discretion to issue a payment arrangement, we typically examine the customer's demonstrated payment history, or lack thereof, and compliance history with utility-issued payment arrangements. *Caraballo* at 16 (citing *Hewitt*).

Section 1405(c) provides an express limitation to the Commission's general power to grant a payment arrangement. Specifically, it prohibits the Commission from establishing a payment arrangement where the customer's unpaid arrears result from unpaid rates billed under a utility's customer assistance program or "CAP." 66 Pa. C.S. § 1405(c); *see also Hewitt*.

Section 1405(c) states:

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).

A "customer assistance program" is defined as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa. C.S. § 1403.

Although the term "customer assistance program rates" is not itself a defined term under Chapter 14 of the Code, we have previously recognized such term as

including rates charged to customers currently enrolled in CAP programs, including rates for current service and rates for deferred pre-CAP arrearages, and arrearages that accumulated while a customer formerly was enrolled in a CAP program, given that these arrearages accumulated from the non-payment of customer assistance program rates. *See Hewitt* at 10.

For any customer who defaults on a Commission-issued payment arrangement, the customer may receive relief from the Commission if the customer demonstrates a “change in income” or a “significant change in circumstance.” 66 Pa. C.S. §§ 1405(d), (e).

A “change of income” is defined as follows:

A 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.

A “significant change in circumstance” is defined as follows:

Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (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.

- (4) Increase in the customer's number of dependents in the household.

66 Pa. C.S. § 1403.

If the payment-defaulted customer establishes that he/she experienced a “change in income” since the time of the previously Commission-ordered payment arrangement, the Commission is authorized to exercise its discretion and grant a second or subsequent payment arrangement to the customer. 66 Pa. C.S. § 1405(d).

If the payment-defaulted customer establishes that such payment default was a result of a “significant change in circumstance,” the Commission is authorized to reinstate the previous Commission-ordered payment arrangement and extend the remaining term for a period of six months. 66 Pa. C.S. § 1405(e).

In either case, however, the Commission will examine all relevant circumstances related to the payment-defaulted customer, as noted above, to ensure that the granting of the appropriate relief is a prudent exercise of discretion, while considering the needs and interests of both paying and non-paying customers.

2. Burden of Proof

As the proponent of a rule or order, the complainant bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent is responsible or accountable for the problem described in the complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a “preponderance of the evidence.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654,

602 A.2d 863 (1992) (*Lansberry*). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *See Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 48-49, 70 A.2d 854, 855 (1950).

The burden of proof comprises two distinct burdens – the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. It may shift between the parties during a hearing. If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *Id.* If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant’s claim. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983) (*Burleson*).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *Milkie*; *See*

also Riedel v. County of Allegheny, 633 A.2d 1325, 1328, n.11 (Pa. Cmwlth. 1993); *Burleson*. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the ultimate fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *Moore*.

Also, adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa. C.S. § 704. “Substantial evidence” is an appellate standard of review and not a standard of evidence. *Lansberry*, 578 A.2d at 602. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

B. Special Agent’s Initial Decision

In the Initial Decision, the Special Agent made twenty-eight Findings of Fact and reached eight Conclusions of Law. I.D. at 3-7 and 11-12. We shall adopt and incorporate herein by reference the Special Agent’s Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

In her Initial Decision, the Special Agent noted that the Complainant raised two issues in her Complaint: (1) incorrect charges on her gas utility bill; and (2) a request for a second Commission-issued payment arrangement. I.D. at 8.

With regard to the first issue, the Special Agent preliminarily noted that the Complainant did not provide any record evidence to support her claim of incorrect charges on her utility bill. I.D. at 8. The Special Agent explained that the Complainant specifically testified during the hearing that she was not disputing her bills, but that she was confused about three returned/rejected payments of \$209 she attempted to make in July 2021. I.D. at 8 (citing Tr. at 13, 14, 29). The Company's witness, Ronda Cobb, a junior customer review officer for PGW, testified that two of the July 2021 payments were made by check (the July 22 and 28 payments) and one was made by credit card (the July 27 payment). However, the checks were returned, and the credit card payment was rejected, due to various situations outside of the control of the Company.⁴ I.D. at 8, n.6; Tr. at 22; PGW Exhibit (Exh.) 1 at 3; PGW Exh. 2 at 1-3. As a result of the returned/rejected payments, Ms. Cobb noted that Ms. Williams was advised on September 23, 2021, that her account was now under a cash-only policy. Tr. at 21-22, 24; PGW Exh. 2 at 3. Accordingly, the Special Agent dismissed the Complainant's original claim that there were incorrect charges on her bill. I.D. at 8.

With regard to the second issue in which the Complainant requested a second payment arrangement, the Special Agent determined that Ms. Williams would be eligible for another Commission-issued payment arrangement only if she had suffered a change in income. I.D. at 9 (citing 66 Pa. C.S. § 1405(d)).⁵ However, since Ms. Williams

⁴ Ms. Cobb testified that the July 22 check in the amount of \$209 was rejected and returned to the Complainant because the Complainant's account had been closed. The Complainant explained the reason for this was that her bank card was hacked, and her bank put her account on hold. Tr. at 22; PGW Exh. 2 at 2. The July 27 credit card payment was rejected by PGW because an incorrect CVV (Card Verification Value) number was entered for the transaction. Tr. at 22; PGW Exh. 2 at 3. The July 28 check in the amount of \$209 was received and rejected by PGW on July 28, 2021, and August 5, 2021, respectively, due to insufficient funds in the account. PGW Exh. 1 at 3.

⁵ The Commission may only issue a second or subsequent payment arrangement if there has been a change of income since the prior Commission-issued payment arrangement. Specifically, Section 1405(d) provides:

defaulted on her second Commission-issued payment arrangement⁶ and, based on her testimony, did not experience a change in income as defined by the Code, the Special Agent ruled that Ms. Williams did not satisfy her burden of proving she is eligible for a subsequent Commission-issued payment arrangement based upon a change of income. I.D. at 10.

The Special Agent based the above ruling on testimony provided by Ms. Williams which indicated her income actually increased rather than decreased since the establishment of her October 2017 payment arrangement. *Id.* The Special Agent determined that, based on the record in this proceeding, Ms. Williams' household income increased from \$1,900 per month (\$22,800 per year) in October 2017 to \$4,333 per month (\$52,000 per year) at the time of the hearing. Thus, the Special Agent stated she was constrained by the Section 1405(d) of the Code in concluding that Ms. Williams did

(d) Number of payment arrangements. – Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

⁶ The Complainant's second Commission-issued payment arrangement was awarded on October 5, 2017, at BCS Case No. 3542951 (October 2017 payment arrangement), and involved a Level 1 payment arrangement based upon a gross monthly household income of \$1,900 and a household size of three (one adult and two children). I.D. at 10 (citing PGW Exh. 5 at 1-4).

not satisfy her burden of proving she is eligible for a subsequent payment arrangement based upon a change in income.⁷ *Id.*

The Special Agent also reviewed whether the Complainant qualified for a reinstatement of the prior Commission-issued payment arrangement based on a significant change in circumstance. Chapter 14 of the Code provides that if the payment-defaulted customer establishes that such payment default was a result of a “significant change in circumstance,” the Commission may reinstate the Commission-issued payment arrangement and extend the remaining term for an initial period of six months. I.D. at 10 (citing 66 Pa.C.S. § 1405(e)).⁸ In this regard, the Special Agent concluded that Ms. Williams does not qualify for a subsequent Commission-issued payment arrangement under the “significant change in circumstance” clause because her annual

⁷ The Special Agent explained that the Complainant provided conflicting testimony regarding her gross income when she testified at one point in the hearing that her gross income was \$353.80 per month (\$4,246 per year), and likewise testifying at another time that her gross annual salary was \$52,000 (\$4,333 per month). I.D. at 10, n.7; Tr. at 15. The Special Agent found that the Complainant’s testimony that she works forty hours per week with an annual salary of \$52,000 was more credible in view of Ms. Williams’ admission that her most recent paycheck was \$300 short due to going back to work two days into the pay period, indicating that those two days alone would equate to \$300 in income. I.D. at 10, n.7 (citing Tr. at 11-12); Tr. at 17. We note that, based on gross income of \$300 for two eight-hour days, the Complainant’s hourly rate would be \$18.75 ($\$300 \div 16 \text{ hours} = \18.75 per hour). This would equate to an approximate annual income of \$39,000 ($\$18.75 \times 40 \text{ hours per week} \times 52 \text{ weeks} = \$39,000 \text{ per year}$). Nevertheless, this still constitutes an increase in Ms. Williams’ annual household income compared to her household income of \$1,900 per month (\$22,800 per year) under her October 2017 payment arrangement.

⁸ “Significant change in circumstance” is defined as a customer with a household less than 300% of the Federal poverty level and who has experienced any of the following four circumstances: (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 the customer's residence; or (4) an increase in the customer's number of dependents in the household. 66 Pa. C.S. § 1403.

household income of \$52,000 is more than \$40,770, or 300% of the 2022 federal poverty guideline of \$13,590 for a one-person household.⁹

In light of the above, the Special Agent denied the Complainant's request for a Commission-issued payment arrangement and dismissed her Complaint because the Complainant did not satisfy her burden that she is eligible for a subsequent Commission-issued payment arrangement or a reinstatement and extension of her second Commission-issued payment arrangement. I.D. at 11, 12.

C. Exceptions

In her Exceptions, Ms. Williams requests a settlement for the \$2,244 catch-up payment that she was required to pay in order to re-establish a payment arrangement with PGW. In making this request, the Complainant states that she would be able to pay \$1,112 by September 16, 2022.

The Complainant states she no longer works at Hussian College and started working for the Philadelphia Job Corps on April 18, 2022. She notes she made payments to PGW in April and June 2022, but none in May and July 2022 because she was assisting her brother, with his June rent while he was hospitalized and unable to work due

⁹ See *Federal Register*, Vol. 87, No. 14 at 3316 (January 21, 2022), also available at: <https://aspe.hhs.gov/poverty-guidelines>.

to bypass surgery, and his July rent when he returned home and was still unable to work.¹⁰

Ms. Williams submits that she is concerned about having her service shut off as winter approaches and claims she would like to re-establish good standing with PGW.

D. Disposition

Upon our review of the Complainant's Exceptions, we must decline to provide the relief she requests. Pursuant to Section 1405(d) of the Code, we are prohibited by law from granting the requested relief to reestablish another payment arrangement because Ms. Williams defaulted on the 2017 Commission-issued payment arrangement at BCS No. 3542951. Furthermore, as the Special Agent appropriately determined, the Complainant is not qualified for a reinstatement and six-month extension of the Commission-issued payment arrangement pursuant to Section 1405(e) of the Code because the Complainant's current annual household income is more than 300% of the 2022 federal poverty guideline. However, even if the Complainant's annual household income did qualify, based on our review of the extra-record arguments contained in the Complainant's Exceptions, we must conclude that Ms. Williams did not experience one or more of the required "significant changes in circumstance" under Section 1403 of the Code which are limited to: (1) the onset of a chronic or acute illness resulting in a

¹⁰ In presenting this argument for the first time in Exceptions, Ms. Williams relies on facts that are not supported by the record below. In accordance with our Regulation at 52 Pa. Code § 5.431, after the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. PGW has not objected to this argument as the Company did not file Replies to Ms. Williams' Exceptions. However, even if we were to find good cause, as addressed in our Disposition, Ms. Williams' argument is unavailing due to statutory constrictions on our exercise of discretion in granting further payment arrangement relief under the facts of record in this case.

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 the customer's residence; or (4) an increase in the customer's number of dependents in the household. 66 Pa. C.S. § 1403. Accordingly, we shall deny the Complainant's Exceptions.

Before concluding, we note that although we are prohibited by law from offering the Complainant another Commission-issued payment arrangement, and we are not permitted to order the Company to do so, there are no rules or regulations prohibiting subsequent payment arrangements mutually agreed to between PGW and the Complainant. Therefore, we encourage the Company and the Complainant to work toward that goal.

Conclusion

In view of the above discussion, we shall deny the Complainants' Exceptions to the Special Agent's Initial Decision and adopt the Special Agent's Initial Decision that dismisses Ms. Williams Complaint; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Terri Williams on August 12, 2022, are denied.
2. That the Initial Decision of Special Agent Kailey B. Maguire, issued on July 25, 2022, is adopted.

3. That the Formal Complaint filed by Terri Williams against Philadelphia Gas Works at Docket No. F-2021-3030122 on December 20, 2021, is dismissed.

4. That the proceeding at Docket No. F-2021-3030122 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 27, 2022

ORDER ENTERED: October 27, 2022