

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

Public Meeting held January 12, 2023

Commissioners Present:

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

Christopher Haymes

C-2022-3032787

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Christopher Haymes (Complainant), on November 21, 2022, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) F. Joseph Brady, which was issued on November 21, 2022. Philadelphia Gas Works (PGW or the Company) filed its Reply to Exceptions on December 9, 2022. For the reasons stated below, we shall deny the Exceptions of the Complainant and dismiss the Formal Complaint (Complaint).

I. History of the Proceeding

On June 3, 2022, the Complainant filed the instant Complaint with the Commission against PGW. The Complainant alleged that PGW was threatening to shut off his gas service and requested a Commission-issued payment arrangement. Complaint at 2-3.

On June 27, 2022, PGW filed an Answer which admitted in part, and denied in part, various material allegations of the Complaint. PGW averred that the Complainant has defaulted on two PGW-issued payment agreements and one Commission-issued payment arrangement due to lack of payment. PGW requested that the Commission deny all relief requested in the Complaint and dismiss the Complaint. Answer at 1-2.

On August 17, 2022, a telephonic hearing was held in this matter. The Complainant appeared *pro se* and testified on his own behalf. PGW was represented by counsel, presented the testimony of one witness, and offered three exhibits which were admitted into the record without objection. The record closed on August 31, 2022. I.D. at 2.

On November 21, 2022, the Commission issued the Initial Decision of ALJ Brady in which he found that the Complainant failed to meet his burden of proof and recommended that the Commission deny the Complaint. Namely, the ALJ ruled that a portion of the Complainant's outstanding balance is comprised of customer assistance program (CAP) arrears, which cannot be the subject of a Commission-issued payment arrangement, and the Complainant failed to carry his burden of proving that he is entitled to a new or subsequent Commission-issued payment arrangement. I.D. at 1, 6.

As noted, *supra*, the Complainant filed Exceptions on November 21, 2022. PGW filed its Reply to Exceptions on December 9, 2022.

II. Discussion

A. Legal Standards

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

1. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that PGW 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). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. 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).

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 PGW. If the evidence presented by PGW is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to rebut that of PGW. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Responsible Utility Customer Protection Act

The Responsible Utility Customer Protection Act (Act), 66 Pa. C.S. §§ 1401-1419, applies to complaints alleging the inability to pay and requesting a Commission-issued payment arrangement. This Act provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued, *inter alia*, 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 also provides certain limitations that the Commission must follow, including which account balances cannot be subject to payment arrangements and the number of payment arrangements that may be issued. Specifically, Section 1405(c) of the Code prohibits the Commission from issuing payment arrangements on CAP program 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).

In addition, the Act states that the Commission is prohibited from establishing a second or subsequent payment arrangement, absent a change of income, if the customer defaults on a prior payment arrangement. Section 1405(d) of the Code states the following with regard to the establishment of Commission-issued payment arrangements:

- (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.

66 Pa. C.S. § 1405(d).¹

Furthermore, the Act authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted as a result of significant change in circumstances. Section 1405(e) provides:

- (e) **Extension of payment arrangements.**--If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The

¹ In relevant part, Section 1403 of the Code defines the following terms:

Change in income. 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.

...

Household income. The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa. C.S. § 1403.

initial extension period may be extended for an additional six months for good cause shown.

66 Pa. C.S. § 1405(e).²

B. Positions of the Parties

The Complainant requested a Commission-issued payment arrangement. Complaint at 2-3. At the hearing, the Complainant testified that he resides with his wife and two adult children at the service address, and the current total monthly household income is approximately \$2,800. Tr. at 7, 9-10, 15. The Complainant acknowledged that he filed the Complaint to get some time to pay down his payment arrangement and avoid having his gas service terminated. Tr. at 7-8.

PGW requested that the Commission dismiss the Complaint. Answer at 2. PGW's witness testified that, as of August 17, 2022, the Complainant's outstanding balance was \$5,040.38, of which \$2,650 consists of Customer Responsibility Program

² A "significant change in circumstance" is defined as the following:

Significant change in circumstance. 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 the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa. C.S. § 1403.

(CRP)³ arrears. Tr. at 26-27. In addition, PGW's witness testified that the Complainant has defaulted on a Commission-issued payment arrangement, which was established in December 2016, as well as two prior PGW-issued payment arrangements, for non-payment. Tr. at 28-29. Also, PGW's witness testified that, as of the date of the hearing, the Complainant last submitted a payment on January 24, 2020. Tr. at 31.

C. Initial Decision

The ALJ made nine Findings of Fact and reached seven Conclusions of Law. I.D. at 2-3, 6-7. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In addressing the Complainant's request for a payment arrangement, the ALJ explained that Section 66 Pa. C.S. § 1405 provides limitations that the Commission must follow in issuing payment arrangements, including the number of payment arrangements and which account balances cannot be subject to a payment arrangement. The ALJ found that the portion of the Complainant's outstanding balance that is comprised of \$2,650 in CRP arrears cannot be the subject of a payment arrangement approved by the Commission. The ALJ explained that PGW's CRP program is a CAP program, and the Commission is expressly prohibited from issuing payment arrangements on CAP rates under 66 Pa. C.S. § 1405(c). I.D. at 5.

Next, the ALJ concluded that the Commission cannot establish a second Commission-issued payment arrangement or order another PGW-issued payment agreement for the Complainant. The ALJ explained that pursuant to 66 Pa. C.S.

³ PGW's CRP program is a CAP program.

§ 1405(d), the Commission cannot issue another payment arrangement on the remaining amount of the non-CRP arrears of \$2,390.38 because the Complainant previously defaulted on a Commission-issued payment arrangement and did not present any evidence to prove that he experienced a change in income since the prior Commission-issued payment arrangement was established in December 2016. I.D. at 6.

In light of the above, the ALJ found that the Complainant failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement. Therefore, the ALJ denied the Complaint. I.D. at 6.

D. Exceptions⁴ and Reply to Exceptions

The Complainant's Exceptions consist of a one-paragraph typewritten letter in which the Complainant takes exception to the ALJ's Initial Decision. The Complainant avers that he has experienced extenuating circumstances and a loss of income, that his wife was hospitalized multiple times with no income, that he has two daughters in college, and that he is the primary caregiver for his elderly mother. The Complainant contends that these reasons along with others are the reasons for the failed arrangements and he requests a chance to explain in detail. Exc. at 1.

In its Reply to Exceptions, PGW submits that the Complainant's Exceptions failed to demonstrate that the Initial Decision is unsupported by substantial evidence and failed to identify any error of law or fact contained in the Initial Decision. Rather, PGW argues that the Complainant reiterates the same legal arguments presented

⁴ We note that the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to the relevant pages of the Initial Decision. 52 Pa. Code § 5.533(b). Nevertheless, recognizing that the Complainant is appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) of our Regulations, and consider the merits.

at the hearing and improperly requests another hearing. PGW further submits that the Commission should sustain the Initial Decision because the Complainant failed to meet his burden of proof, and establish, by a preponderance of the evidence, his claims against PGW. PGW states that the ALJ properly determined that the Complainant failed to establish that he is entitled to a second Commission-issued payment arrangement because he defaulted on a prior one and did not produce any evidence of a change in income, a portion of his account arrears consisted of CRP arrears, and he has a poor payment history. Furthermore, PGW contends that the ALJ considered all of the evidence and properly applied the facts to the applicable law. Finally, PGW argues that the Initial Decision is supported by substantial evidence. For these reasons, PGW requests that the Commission deny the Complaint and adopt the Initial Decision. R. Exc. at 2-3.

E. Disposition

Upon our review and consideration of the record evidence, the Complainant's Exceptions, and the applicable law, we find that the Complainant has failed to meet his burden of proving that he is entitled to a Commission-issued payment arrangement. As noted above, the Act provides strict guidelines that we must follow in handling customer complaints. Under the Act, we may grant one payment arrangement consistent with the terms set forth in 66 Pa. C.S. § 1405(b). If the customer defaults on this arrangement, we cannot grant a second or subsequent payment arrangement absent a change of income. Similarly, we may not extend a payment arrangement absent a significant change in circumstance. In addition, we are prohibited under the Act from granting a payment arrangement for any CAP arrearages. 66 Pa. C.S. §§ 1403, 1405(c)-(e).

As noted above, the Complainant's outstanding account balance consists of both CRP, or CAP, arrearages and non-CRP arrearages. Tr. at 26-27. We lack the authority to establish a payment arrangement on the CRP portion of the Complainant's

outstanding arrearage. *See* 66 Pa. C.S. § 1405(c). Therefore, the \$2,650 portion of the Complainant's outstanding balance comprised of CRP arrears cannot be the subject of a Commission-approved payment arrangement. Nothing in the Complainant's Exceptions challenged the ALJ's conclusion of law or analysis with respect to the CRP-portion of the Complainant's outstanding balance.

As for the non-CRP portion of the arrearage, the record shows that the Complainant received a Commission-issued payment arrangement in December 2016, on which he defaulted. Tr. at 28-29. Furthermore, the Complainant did not present any evidence or make a showing of either a change in income or a significant change in circumstance after defaulting on the previously Commission-ordered payment arrangement.⁵ Therefore, pursuant to 66 Pa. C.S. § 1405(d)-(e), we cannot issue another payment arrangement, or reinstate and extend the payment arrangement, on the remaining amount of the Complainant's non-CRP arrears.

For the reasons set forth above, the Complainant's Exceptions shall be denied.

III. Conclusion

Based on our review of the Exceptions, the Initial Decision, and the record in this proceeding, we shall deny the Exceptions of Christopher Haymes and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

⁵ We note that the Complainant's payment history has been poor, which is demonstrated by the fact that, at the time of the hearing, he had not made a payment on his gas service account for more than two years. Tr. at 31.

IT IS ORDERED:

1. That the Exceptions of Christopher Haymes, filed on November 21, 2022, to the Initial Decision of Administrative Law Judge F. Joseph Brady are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on November 21, 2022, is adopted.
3. That the Formal Complaint filed by Christopher Haymes on June 3, 2022, against Philadelphia Gas Works at Docket No. C-2022-3032787, is denied and dismissed, consistent with this Opinion and Order.
4. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: January 12, 2023

ORDER ENTERED: January 12, 2023