

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Asia West	:	
	:	
v.	:	F-2022-3034727
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of a gas service customer seeking a Commission-ordered payment arrangement because she failed to demonstrate a good faith effort to pay her utility bills and the terms of the arrangement would be unaffordable.

HISTORY OF THE PROCEEDING

On August 25, 2022, Asia West (Ms. West or Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. West placed checkmarks in the boxes indicating: “The utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.”

The Complaint is a timely appeal from a decision of the Commission's Bureau of Consumer Services (BCS) at Case No. 3851470, issued on July 20, 2022.

On September 19, 2022, PGW filed an Answer to the Complaint (Answer) which admitted in part and denied in part various material allegations of the Complaint. In its Answer, PGW admitted that it provides gas service to the Complainant and that it issued a shut off notice. PGW averred that the BCS issued Ms. West a payment arrangement on July 20, 2022.

By Hearing Notice dated September 22, 2022, an Initial Call-In Telephonic Hearing was scheduled for November 30, 2022, and the matter was assigned to me.

On November 30, 2022, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on her own behalf. The Respondent was represented by Graciela Christlieb, Esquire, who presented the testimony of Jessica Antonetti, a Customer Review Officer at PGW. During the hearing, the Respondent offered three exhibits, all of which were entered into the record without objection.

The record closed on December 20, 2022, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Asia West.
2. The Respondent is Philadelphia Gas Works, a gas utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. The Complaint is a timely appeal from the July 20, 2022, decision of the BCS at Case No. 3851470.
4. The Complainant receives gas service from PGW at 4324 Reno Street, Philadelphia, PA, 19104 (Service Address). Tr. 5.
5. The Complainant resides alone at the Service Address. Tr. 6-7.

6. At the time of the hearing, the current total household income was approximately \$2,600.00 per month, which exceeds 150%, but is less than 250%, of the Federal poverty level for a household size of one.¹ Tr. 6.

7. As of the date of the hearing, the Complainant's outstanding balance was \$5,974.75. Tr. 12; PGW Exh. 1.

8. The Complainant's current usage bills average \$274 per month. PGW 1.

9. From August 29, 2019, to November 22, 2022, the Complainant made one payment on August 25, 2022, in the amount of \$41.81. Tr. 12; PGW Exh. 1.

10. On June 29, 2021, Ms. West was provided a PGW-issued payment arrangement on which she defaulted. Tr. 13; PGW Exh. 2.

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.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 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). A complainant can meet that burden if she 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.

¹ See, Federal Register, Vol. 87, No. 14 at 3316 (Jan. 21, 2022). See also, <https://aspe.hhs.gov/sites/default/files/documents/4b515876c4674466423975826ac57583/Guidelines-2022.pdf>

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. Unemp. Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); and *Murphy v. Dep't of Pub. Welfare, White Haven Ctr.*, 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).

Additionally, by law, a public utility is entitled to receive payment for the service it provides to customers. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat. Gas Co.*, 60 Pa.P.U.C. 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). 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 Apr. 8, 1988).

In the instant matter, the Complainant filed a timely appeal from the July 20, 2022 decision of the BCS at Case No. 3851470. Accordingly, my review of the Complaint shall be *de novo*. 52 Pa. Code § 56.173(a); *see also, Horinka v. Pa. Power Co.*, Docket No. C-2017-2582842 (Opinion and Order entered Aug. 4, 2017).

The Complainant seeks a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–1419, 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, before awarding a payment arrangement, there also must be an examination as to whether Ms. West has demonstrated some evidence of good faith efforts to pay her utility bills. As the Commission has made clear, while Section 1405 of the Act generally authorizes the Commission to issue a payment arrangement for a customer, it does not require it; rather, it is an exercise of the Commission's discretion which should be exercised very judiciously. *Hayes v. Phila. Gas Works*, Docket No. C-2017-2634526 (Opinion and Order entered Oct. 1, 2018), citing *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013). Specifically, the Commission exercises its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Hayes*. 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 Mar. 17, 2004).

Here, the record does not support awarding the Complainant a payment arrangement. The Complainant has a poor payment history and has demonstrated an inability or unwillingness to comply with a payment arrangement established by PGW. Since August 29, 2019, the Complainant has only made *one payment* in the amount of \$41.81 on an outstanding balance of nearly \$6,000. In addition, the Complainant defaulted on the June 29, 2021 PGW-issued payment arrangement.

Furthermore, given the Complainant's financial circumstances, she is likely to default on any payment arrangement issued by the Commission. 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:

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

66 Pa.C.S. § 1405(b)(2). Ms. West's gross monthly household income of \$2,600 for a household size of one exceeds 150% of the Federal poverty level but does not exceed 250% of the Federal poverty level.² Pursuant to the Act, the Complainant's household income would limit her to 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 \$165.96 per month³ *in addition to* her current usage bills that average \$274 per month, for a total of \$440 per month. This is slightly higher (\$9 more) than the arrangement issued by the BCS, which Ms. West testified she could not afford. Tr. 7. Accordingly, the Complainant's request for a Commission-issued payment arrangement will be denied.

CONCLUSIONS OF LAW

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

² See, Federal Register, Vol. 87, No. 14 at 3315 (January 21, 2022).

³ \$5,974.75 ÷ 36 months = \$165.96.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419, applies to this proceeding.

4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

5. 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 Sept. 12, 2013).

6. 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 Nov. 22, 2013).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Asia West at Asia West v. Philadelphia Gas Works, Docket No. F-2022-3034727 is denied.
2. That Docket No. F-2022-3034727 be marked closed.

Date: March 1, 2023

/s/
F. Joseph Brady
Administrative Law Judge