

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

Public Meeting held April 20, 2023

Commissioners Present:

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

Asia West

F-2022-3034727

v.

Philadelphia Gas Works

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) F. Joseph Brady, issued on March 1, 2023, in the above-captioned proceeding. Exceptions have not been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall amend the Initial Decision consistent with this Opinion and Order.

## History of the Proceeding

On August 25, 2022, Asia West (Complainant or Ms. West) filed the instant Complaint against Philadelphia Gas Works (PGW) alleging that PGW was threatening to shut off her service and requesting a payment arrangement. Complaint at 2.<sup>1</sup>

On September 19, 2022, PGW filed an Answer. In its Answer, PGW admitted, in part, and denied, in part, the material allegations in the Complaint. Specifically, PGW admitted that: (1) it issued a shut off notice for service at the address; and (2) the Complainant is seeking a payment arrangement. Ans. at 1. By way of further answer, PGW noted that: (1) the Complainant established service at the address as of July 1, 2020; (2) the address is listed as residential heat and domestic usage; (3) the address is equipped with a functioning automatic meter reading device and the billing is based on actual meter reading; (4) the Complainant has one prior broken PGW-issued payment arrangement; and (5) the Complainant is appealing the Commission-issued payment arrangement granted to her on July 20, 2022 by BCS at Docket No. 3851470. *Id.*

On September 22, 2022, the Commission served an initial call-in telephonic hearing for this matter for November 30, 2022. The Hearing Notice was served on the Parties. The Hearing Notice, *inter alia*, named the ALJ as the assigned presiding officer and provided a toll-free call-in number to the Parties.

---

<sup>1</sup> The Formal Complaint (Complaint) is a timely appeal of a decision of the Commission's Bureau of Consumer Services (BCS) at Case No. 385170, issued on July 20, 2022. 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). The BCS decision granted the Complainant a payment arrangement. PGW Exh. 3.

On November 30, 2022, the telephone hearing convened as scheduled. The Complainant appeared, self-represented, and testified on her own behalf. I.D at 2. The Complainant did not sponsor any exhibits. PGW was represented by Anita J. Murrays, Esquire, who presented one witness and offered three exhibits, all of which were entered into the record.

The record closed on December 20, 2022.

On March 1, 2023, the Commission issued the Initial Decision in which the ALJ denied the Complainant's request for a Commission-issued payment arrangement in her Complaint on the grounds that the Complainant failed to demonstrate a good faith effort to pay her utility bills and that the terms of an arrangement based on the facts would be unaffordable in this instance. I.D. at 1, 6, and 8.

## **Background**

By way of background, at the time of the hearing, the Complainant receives gas service from PGW at her residence. I.D. at 2. The Complainant resides alone at the address and at the time of the hearing, the Complainant's outstanding balance was \$5,974.75. I.D. at 2-3. The record also indicates that, at the time of the hearing, the Complainant's current total household income was approximately \$2,600 per month, which exceeds 150%, but is less than 250%, of the Federal poverty level for a household size of one<sup>2</sup> and that the Complainant's usage bills averaged \$274 per month. I.D. at 3; Tr. at 6; PGW 1.

---

<sup>2</sup> 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>.

On June 29, 2021, Ms. West was provided a PGW-issued payment arrangement on which she defaulted. I.D. at 3; Tr. at 13; PGW Exh. 2. From August 29, 2019, through November 22, 2022, the Complainant made one payment to PGW.

## **Discussion**

### **A. Legal Standards**

#### **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 Code, 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant 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. *Mill v. Pa. PUC*, 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. *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 customer shifts to PGW. If the evidence presented by PGW is of

co-equal value or “weight,” the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of PGW. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlt. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence 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. Cmwlt. 2001).

## **2. Payment Arrangements**

Here, the Complainant seeks an affordable payment arrangement from the Commission. Thus, Chapter 14 of the Code, the Responsible Utility Customer Protection Act (Act), 66 Pa. C.S. §§ 1401–1419, applies to this proceeding. Section 1405 of the statute provides in pertinent part 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).

## **B. ALJ’s Initial Decision**

ALJ Brady made ten 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 his Initial Decision, ALJ Brady denied and dismissed the Complaint for failure of the Complainant to demonstrate a good faith effort to pay her utility bills and that the terms of a payment arrangement would be affordable for the Complainant.

I.D. at 1, 5-7.

### **C. The Complainant's Request for a Commission-Issued Payment Arrangement**

The ALJ noted that before awarding a payment arrangement, there must be an examination as to whether Ms. West has demonstrated some evidence of good faith efforts to pay her utility bills. According to the ALJ, 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 October 1, 2018) (*Hayes*), citing *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013) (*Hewitt*). 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*. The ALJ stated that 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). I.D. at 5.

The ALJ found that the record did not support awarding the Complainant a payment arrangement. The ALJ explained that 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. The ALJ further noted that given the Complainant's financial circumstances, she is likely to default on any payment arrangement issued by the Commission. I.D. at 5-6.

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.<sup>3</sup> According to the ALJ, 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. The ALJ concluded that unfortunately, since the Complainant's outstanding balance is so high, this would mean she would still have to pay \$165.96 per month<sup>4</sup> 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. I.D. at 6; Tr. 7. Therefore, the ALJ denied the Complainant's request for a Commission-issued payment arrangement. I.D. at 6.

---

<sup>3</sup> See, Federal Register, Vol. 87, No. 14 at 3315 (January 21, 2022).

<sup>4</sup> \$5,974.75 ÷ 36 months = \$165.96.

Accordingly, the ALJ found that the Complainant's poor payment history combined with her outstanding delinquent account, does not warrant the granting of her request for a Commission-issued payment arrangement. I.D. at 6.

#### **D. Disposition**

As a preliminary matter, any argument that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. We are not required to consider expressly or at length each contention or argument raised by 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). On exercise of our independent review of the Parties' positions in their pleadings in this case, we shall adopt the Initial Decision, as modified, consistent with the following discussion.

Upon review, we shall amend ALJ Brady's Initial Decision because the Complainant was eligible for a Commission-issued payment arrangement yet one was not awarded.

In denying Ms. West's request for a Commission-issued payment arrangement, the ALJ relies on several Commission decisions to conclude that the Commission's discretion should be exercised very judiciously and that the Commission should not award a Commission-issued payment arrangement when the Complainant has a poor payment history or an inability to pay.<sup>5</sup> However, these cases involve a request for a second Commission-issued payment arrangement or customers with "mixed" arrearages, i.e., arrearages including both customer assistance program (CAP) and non-CAP arrearages. We are not discounting the record evidence that Complainant's lack of

---

<sup>5</sup> *See, Hayes; Hewitt.*

payments has resulted in an account balance totaling nearly \$6,000. The size of the arrearage will present a challenge. However, as the Complainant has not defaulted on a Commission-issued payment arrangement, she should be afforded this final opportunity to pay down the subject arrearages over the applicable number of months in accordance with Section 1405 of the Code. Thus, our decision in this matter seeks to ensure that this Complainant is afforded a payment arrangement opportunity akin to similarly-situated ratepayers in arrears on utility balances. Since the Complainant's income falls between 150% and 250% of the Federal Poverty Level Guidelines for a household size of one, the Complainant is eligible for a three-year payment arrangement to address her outstanding balance. 66 Pa. C.S. § 1405(b)(2). Therefore, beginning with the first bill following the Commission's final Order in this case, the Complainant is required to pay her current bill plus an amount equal to one thirty-sixth (1/36th) of the balance accrued on her account. We caution the Complainant to adhere to this payment arrangement because it is the best arrangement the Commission can grant under Chapter 14. We also anticipate PGW timely utilizing all available collection methods available to the Company pursuant to Section 1405 of the Code and Section 56.81 of the Commission's Regulations if the Complainant fails to adhere to this payment arrangement. We would also like to reiterate that, pursuant to Section 1405(f) of the Code, regulated utilities retain their authority to pursue payment of any portions of a customer's bill which are not in dispute pending the outcome of a complaint filed with the Commission. Accordingly, we shall modify the ALJ's Initial Decision, consistent with the discussion in this Opinion and Order.

### **Conclusion**

Upon review of the record, we shall amend the ALJ's Initial Decision and grant the Complaint consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on March 1, 2023, is amended to grant Asia West's request for a Commission-issued payment arrangement, consistent with this Opinion and Order.

2. That Asia West shall make monthly payments consisting of her current bill plus one thirty-sixth ( $1/36^{\text{th}}$ ) of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.

3. That, as long as Asia West keeps the payment schedule stated herein, Philadelphia Gas Works shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payment or finance charges against her account.

4. That, if Asia West does not keep the payment schedule stated herein, Philadelphia Gas Works is authorized to suspend or terminate her utility service in accordance with the Commission's statutes and regulations.

5. That this proceeding shall 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: April 20, 2023

ORDER ENTERED: May 23, 2023