

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joanne M. McGarrity	:	
	:	
v.	:	F-2022-3035669
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision denies Complainant’s request for a payment arrangement and dismisses the Formal Complaint for failure to meet the burden of proof.

HISTORY OF THE PROCEEDINGS

On September 26, 2022, Joanne M. McGarrity (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent).¹ Ms. McGarrity checked the box on the Formal Complaint form alleging PGW was threatening to shut off her service or had already shut off her service. She requests a payment arrangement. Ms. McGarrity claims she received two e-mails that “PHL ASSIST program” sent PGW \$2,640.84 along with her account number.

¹ Ms. McGarrity timely appealed the decision dismissing her informal complaint rendered by the Commission’s Bureau of Consumer Services (BCS) at BCS Case No. 3846893.

On October 17, 2022, PGW filed its answer. PGW requests that the Complaint be dismissed, and that the relief requested be denied by the Commission.

By Initial Call-In Telephone Hearing Notice dated December 20, 2022, the Commission scheduled this matter for an initial call-in telephone hearing on February 9, 2023. Later that same day, a Corrected Hearing Notice was served scheduling the hearing for February 9, 2023, and correcting the time of the hearing from 10:00 a.m. to 1:30 p.m. On December 20, 2022, I issued a Prehearing Order for Telephone Hearing informing the parties about the procedures for the hearing.

The telephone hearing convened as scheduled. PGW declined to discuss settlement with Complainant prior to the hearing. Tr. 7-8. Complainant appeared, self-represented, and testified on her own behalf. Complainant did not sponsor any exhibits. PGW was represented by Graciela Christlieb, Esquire, who called one witness, Jessica Antonetti, a customer review officer. PGW's witness sponsored pre-marked Exhibits PGW-1 through PGW-4, which were admitted into the record.

The record consists of the transcript of the hearing on February 9, 2023, and PGW Exhibits PGW-1 through PGW-4. The record was closed on March 14, 2023, by Interim Order Closing the Hearing Record. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant is Joanne M. McGarrity, who resides at 821 Griffith Street, Philadelphia, Pennsylvania (service address). Tr. 11.
2. Respondent, PGW, is a jurisdictional public utility providing gas service to Pennsylvania customers including Complainant.
3. PGW provides gas service to Complainant at the service address. Tr. 26-27; PGW Ex. 3.

4. At the hearing, Complainant's total account balance was \$10,448.66. Tr. 26-27; PGW Ex. 3.

5. Complainant lives alone at the service address and her gross monthly income consists of Social Security benefits in the amount of \$2,200.00. Tr. 15-17.

6. Complainant's husband resided with her at the service address prior to July 2022. Tr. 17.

7. Complainant's account balance includes \$7,273.62 in PGW Customer Responsibility Program (CRP) arrearages. Tr. 24-27; PGW Ex. 3.

8. Complainant's account balance includes an additional \$3,175.04 that is not CRP arrearages. Tr. 24-27; PGW Ex. 3.

9. Complainant has made only 4 payments on her account between February 2, 2020 and February 18, 2023. Tr. 27; PGW Ex. 3.

10. On May 25, 2022, the BCS denied Complainant's request for a payment arrangement at BCS Case No. 336373 because Complainant's balance included CRP arrearages in the amount of \$7,273.62. Tr. 22-23; PGW Ex. 2.

11. On August 5, 2022, the BCS dismissed Complainant's informal complaint disputing her balance where she claimed that PGW was paid \$2,640.84 by the Emergency Rental Assistance Program (ERAP) at BCS Case No. 3846893. Tr. 28-29; PGW Ex. 4.

12. On September 23, 2022, PGW provided a 10-day notice of termination to Complainant because her bill is past due. Tr. 21-22; PGW Ex. 1.

DISCUSSION

Section 701 of the Code, 66 Pa.C.S. § 701, provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.

In this proceeding Complainant, as the party seeking affirmative relief from the Commission, bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, Complainant must demonstrate that the Respondent is responsible for the problems alleged in her Complaint through a violation of the Code or a regulation or outstanding order of the Commission. 66 Pa.C.S. §701. This must be established by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n.*, 578 A.2d 600 (Pa. Cmwlth. 1990). In addition, the Commission's findings of fact must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pub. Util. Comm'n.*, 413 A.2d 1037 (Pa. 1980).

Termination of Service and Billing Dispute

Section 1406(a) of the Code permits a utility company to terminate service under certain conditions. Section 1406, in relevant part, provides as follows:

- (a) Authorized termination. - A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection (b) for any of the following actions by the customer.
 - (1) Nonpayment of an undisputed delinquent account.

(2) Failure to comply with material terms of a payment arrangement.

66 Pa.C.S. § 1406(a).

Ms. McGarrity checked the box on the Formal Complaint form indicating PGW was threatening to shut off her service or had already shut off her service. At the hearing, she did not offer any evidence that PGW violated the Code, Commission regulations or any orders with respect to termination procedures. Ms. McGarrity also did not offer any evidence that she disputed PGW's metered usage.

Ms. McGarrity testified that a payment in the amount of \$2,630.84 was made on her behalf to PGW from the Emergency Rental Assistance Program in Philadelphia. Tr. 14. She did not provide any documentary evidence in the form of an exhibit of the alleged payment. PGW's witness, Jessica Antonetti, testified that PGW did not receive any such payment from the Emergency Rental Assistance Program to be applied to Complainant's account. PGW also provided a statement of account as PGW Ex. 3 that does not include any such payment.

By failing to provide evidence of payment, Ms. McGarrity has failed to meet her burden of proving that a payment in the amount of \$2,630.84 was made by the Emergency Rental Assistance Program in Philadelphia on her behalf to PGW. She has failed to establish that her bills for service are incorrect. Ms. McGarrity also failed to establish that PGW violated the Code, Commission regulations or any Commission orders in this case.

Payment Arrangement

Ms. McGarrity seeks an affordable payment arrangement from the Commission. Chapter 14 of the Code, the Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applies to this proceeding. Section 1405 of the Code 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.

Ms. McGarrity’s request for a Commission-ordered payment arrangement must be in conformity with the Commission’s decision in *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013) (*Hewitt*). In *Hewitt*, complainant was seeking a Commission PAR on mixed arrearages which included customer assistance program (CAP) and non-CAP charges. The Commission noted that it did not have the authority to grant a payment arrangement on CAP charges under Section 1405(c) of the Code, which states, “[c]ustomer assistance program rates shall be timely paid and shall not be the subject to payment arrangements negotiated or approved by the commission.” 66 Pa.C.S. § 1405(c). However, the Commission had the authority to grant a payment arrangement on non-CAP charges.

Ms. McGarrity owes PGW CRP arrears in the amount of \$7, 273.62. This sum cannot be part of any payment arrangement ordered by the Commission pursuant to 66 Pa.C.S. § 1405(c). Consequently, even if a payment arrangement was ordered on Ms. McGarrity’s non-CRP arrears, which totaled \$3,175.04 at the time of the hearing, Ms. McGarrity’s account would still be subject to termination for non-payment of the CRP arrears sum of \$7,273.62.

In *Hewitt*, the Commission declined to exercise its authority, to grant the complainant a payment arrangement based on the customer’s poor payment history and her inability to keep company-issued payment arrangements. *Hewitt* at 10-12.

Similarly, in the present case, Ms. McGarrity has a poor payment history. Ms. McGarrity made only four payments between February 2, 2020 and February 18, 2023. Tr. 26-27; PGW Ex. 3. Ms. McGarrity’s account balance at the time of the hearing was \$10,448.66. Tr. 27; PGW Ex. 3.

Importantly, by law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa.P.U.C. 637 (1982). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which its remaining customers must pay. 66 Pa.C.S. § 1402(1)-(2).

The Commission has a responsibility to exercise its authority very judiciously when granting customers payment arrangements and should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Hewitt*.

Ms. McGarrity's request for a payment arrangement is denied. She owes a large balance, and her payment history is poor. Accordingly, Ms. McGarrity's Complaint is dismissed in the ordering paragraphs below.

CONCLUSIONS OF LAW

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

2. Complainant has the burden of proving Respondent violated the provisions of the Public Utility Code, Commission regulations or a Commission order in providing service. 66 Pa.C.S. § 332(a).

3. The Public Utility Code permits a utility company to terminate service for non-payment of an undisputed delinquent account or for the failure of the customer to comply with the terms of a payment arrangement. 66 Pa.C.S. § 1406.

4. The Commission has a responsibility to exercise its authority very judiciously when granting customers payment arrangements and should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay

their utility bills. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013).

5. Complainant failed to meet her burden of proving that Respondent violated a Commission order, the Code or a Commission regulation. 66 Pa.C.S. §§ 332, 701.

6. Complainant failed to meet her burden of proving she should be ordered a payment arrangement from the Commission. 66 Pa.C.S. §§ 332, 701, 1405.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Joanne M. McGarrity in *Joanne M. McGarrity v. Philadelphia Gas Works* at Docket No. F-2022-3035669 is dismissed.

2. That the Secretary's Bureau shall mark Docket No. F-2022-3035669 closed.

Date: June 8, 2023

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge