

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sheena Hunter	:	
	:	
v.	:	C-2023-3039118
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Michael J. Mroczka  
Special Agent

**INTRODUCTION**

This Initial Decision sustains the Formal Complaint of a gas service customer because Complainant has met her burden of proving she is eligible for a Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On March 13, 2023, Sheena Hunter (Complainant or Ms. Hunter) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent). Ms. Hunter checked the box on the Complaint form requesting a Commission-issued payment arrangement. In the Complaint, Ms. Hunter stated that her service was disconnected in October of 2022 and that PGW was requesting that she pay the entire balance to reconnect the service.

On April 10, 2023, PGW filed its Answer to the Formal Complaint which admitted in part and denied in part various material allegations of the Complaint. In its Answer,

Respondent alleged that Complainant has had multiple PGW-issued payment arrangements that have not been satisfied. PGW requested the Complaint be dismissed.

By Hearing Notice dated April 11, 2023, an Initial Call-In Telephonic Hearing was scheduled for May 16, 2023, at 10:00 a.m., and the matter was assigned to me.

A Prehearing Order was issued on April 18, 2023, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On May 16, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on her own behalf, and offered no exhibits for the record. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented the testimony of one witness, David Kauffman, a customer review officer for PGW. Mr. Kauffman sponsored the following four exhibits, which were admitted into the record without objection:

PGW Exhibit 1 – Statement of Account Customer Contact History

PGW Exhibit 2 – 10-Day Shut Off Notice

PGW Exhibit 3 – List of Telephone Calls

PGW Exhibit 4 – Payment Agreement History

The record closed on June 12, 2023, upon the filing of the 51-page transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Sheena Hunter, who resides at 1122 South 53<sup>rd</sup> Street, Philadelphia, Pennsylvania 19143 (Service Address). Tr. 8.

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provided gas service to Complainant at the Service Address. Tr. 26.

3. Complainant has a total household size of three at the Service Address.  
Tr. 11.
4. Complainant's gross monthly household income is \$4,173.<sup>1</sup> Tr. 11, 12.
5. Complainant's income and household size places her between 200% and 250% of the Federal poverty level.<sup>2</sup>
6. Complainant's total arrearage is \$5,087.82. Tr. 27; PGW Ex. 1.
7. Complainant has Customer Assistance Program (CAP) arrearage of \$971.50. Tr. 31, 35.
8. Complainant's non-CAP arrearage is \$4,116.32. Tr. 31.
9. Complainant's gas service was disconnected for nonpayment in October 2022. Tr. 10.
10. Complainant has not previously had a Commission-issued payment arrangement. PGW Ex. 4; Tr. 48.

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<sup>1</sup> Complainant testified that she earns a biweekly pay of \$1,926 and makes \$50-51,000 per year. Tr. 11, 12. There are a total of 26 biweekly pay periods in a year.  $\$1,926 \times 26 = \$50,076$ .  $\$50,076 \div 12 \text{ mo.} = \$4,173$  per month.

<sup>2</sup> See, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx>.

## DISCUSSION

### Reconnection of Gas Service

Ms. Hunter's gas service was disconnected in October 2022, prior to her filing the instant Complaint. Tr. 10. PGW has required her to pay her entire balance prior to having her service reconnected. *See*, Compl.; PGW Ex. 2. The Code provides guidance on what PGW may require for reconnection of her service. Section 1407 of the Code states what fees a utility may require for reconnection as follows:

#### **§ 1407. Reconnection of service.**

(a) **Fee.** — A public utility may require a reconnection fee based upon the public utility's cost as approved by the commission prior to reconnection of service following lawful termination of the service.

. . . .

#### **(c) Payment to restore service. —**

(1) A public utility shall provide for and inform the applicant or customer of a location where the customer can make payment to restore service.

(2) A public utility may require:

(i) Full payment of any outstanding balance incurred together with any reconnection fees by the customer or applicant prior to reconnection of service if the customer or applicant has an income exceeding 300% of the Federal poverty level or has defaulted on two or more payment arrangements. If a customer or applicant with household income exceeding 300% of the Federal poverty level experiences a life event, the customer shall be permitted a period of not more than three months to pay the outstanding balance required for reconnection. For purposes of this subparagraph, a life event is:

- (A) A job loss that extended beyond nine months.
- (B) A serious illness that extended beyond nine months.
- (C) Death of the primary wage earner.

(ii) Full payment of any reconnection fees together with repayment over 12 months of any outstanding balance incurred by the customer or applicant if the customer or applicant has an income exceeding 150% of the Federal poverty level but not greater than 300% of the Federal poverty level.

66 Pa.C.S. § 1407(a), (c).

The Commission, in *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered Dec. 6, 2007) (*Crawford*), considered whether Section 1407 of the Code precluded the Commission from ordering a payment arrangement under Section 1405 when the utility service has been disconnected. While the Commission in *Crawford* ultimately declined to award a payment arrangement, they made it clear that a payment arrangement may be awarded for a complainant whose service was terminated. The Commission concluded that:

[W]hile Subsection 1407(c) delineates the terms a utility may impose upon a customer/applicant seeking restoration of service, Subsection 1407(c) in no way divests the Commission of its duty to act as the final arbiter of a utility consumer's rights with respect to payment disputes. If the consumer petitions the Commission for further relief, Subsection 1405(b) delineates the payment arrangement terms the Commission may then impose.

*Crawford* at 14.

Accordingly, as explained below, the Complainant's request for a Commission-issued payment arrangement will be granted on her non-CAP arrears. However, PGW may require satisfaction of the \$971.50 CAP arrears as well as a reconnection fee prior to reconnection of Complainant gas service.

#### Payment Arrangement

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 he 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.

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

Complainant requests 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 (the 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.

**(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:

- (1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.
- (2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.
- (3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.
- (4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

**(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(a)-(c). The Code also restricts the Commission from issuing a second or subsequent payment arrangement if a customer defaults on a previous Commission-issued payment arrangement absent a change in income and restricts the Commission from reinstating

and extending a previous payment arrangement absent a significant change in circumstances. 66 Pa.C.S. §§ 1405(d), (e).

If the Commission has not previously ordered a payment arrangement for a complainant, the Commission has the authority to establish a payment arrangement, pursuant to 66 Pa.C.S. § 1405(a), on a complainant's arrearages within the strict guidelines set forth in 66 Pa.C.S. § 1405(b), as stated above. Ms. Hunter's gross monthly household income of \$4,173 for a household size of three places her between 200% and 250% of the Federal poverty level.<sup>3</sup> Further, Ms. Hunter has not previously been granted a Commission-issued payment arrangement. Therefore, pursuant to the Code, Ms. Hunter would be eligible for a one-year payment arrangement under 66 Pa.C.S. § 1405(b)(3), absent any other restrictions set out in the Code.

The Commission does not have authority to order a payment arrangement on customer assistance program (CAP) arrearages. 66 Pa.C.S. § 1405(c); *Cooper v. PECO Energy Co.*, Docket No. F-2011-2254904 (Opinion and Order entered Aug. 2, 2012) (*Cooper*). 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. PGW's Customer Responsibility Program rates are CAP rates that cannot be the subject of a payment arrangement ordered by the Commission. *See Maxwell v. Phila. Gas Works*, Docket No. C-2017-2607397 (Opinion and Order entered Aug. 23, 2018). A portion, \$971.50, of Ms. Hunter's balance is made up of CAP arrears. Tr. 34. In a mixed arrearage case, the Commission does not have authority to establish a payment arrangement for the CAP arrears

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<sup>3</sup> See, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2023.xlsx> .

under 66 Pa.C.S. § 1405, but is not restricted from issuing a payment arrangement for any remaining arrearage, subject to the discretion of the Commission. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Opinion and Order entered Sept. 12, 2013) (*Hewitt*); *see also*, *Cooper, supra*.

Ms. Hunter's non-CAP arrearage is \$4,116.32. Tr. 31. Based on Ms. Hunter's income and household size, this non-CAP arrearage is eligible for the one-year year payment arrangement under 66 Pa.C.S. § 1405(b). Under 66 Pa.C.S. § 1405(b), Ms. Hunter would be required to pay the budget bill plus \$343.<sup>4</sup> As the Commission explained in *Hewitt*, bifurcating the arrearage and establishing a payment arrangement only for the non-CAP arrearages may not be feasible in most cases. *Hewitt*. Further, in *Crawford*, the Commission held:

the Commission has a responsibility to exercise its authority very judiciously when a utility has lawfully terminated a customer for nonpayment. Specifically, this Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstance outside of their control.

*Crawford*, Docket No. C-20066348 at 15-16.

Here, Ms. Hunter's gas service has been disconnected due to nonpayment. Tr. 10. If provided a payment arrangement on the non-CAP arrears, PGW would still be within their rights to decline to reconnect the service for failure to pay the CAP arrearage of \$971.50. It would not be feasible to provide a payment arrangement if the gas service remained disconnected. However, Ms. Hunter has shown interest in paying off the CAP arrearage in order to get a payment arrangement. *See*, Tr. 9, 24. Ms. Hunter's interest in paying off the CAP arrearage which amounts to approximately one fifth of the total arrearage shows good faith.<sup>5</sup> Also, in recent decisions, the Commission has held that if a complainant is eligible for a

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<sup>4</sup> \$4,116.32 ÷ 12 = \$343.02.

<sup>5</sup> Despite past failed company-issued payment arrangements, and inconsistent payments, Complainant's willingness, and ability to pay a lump sum of \$971.50 in order to get back on track should afford her a chance to satisfy a Commission-issued payment arrangement.

Commission-issued payment arrangement, they should be afforded the payment arrangement. *See, Bongiorni v. West Penn Power Co.*, Docket No. F-2022-3035093 (Opinion and Order entered June 5, 2023); *Reddinger v. Pa. Elec. Co.*, Docket No. F-2022-3032104 (Opinion and Order entered Feb. 28, 2023).

Therefore, since she is eligible for a one-year payment arrangement, I shall grant Ms. Hunter's request for a Commission-issued payment arrangement on her non-CAP arrears. However, PGW may require Ms. Hunter to first satisfy her \$971.50 CAP arrearage and/or the reconnection fee<sup>6</sup> before reconnecting her gas service.

#### CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.
  
2. The burden of proof in this proceeding is upon 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. 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).

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<sup>6</sup> The reconnection fee previously assessed by PGW was \$123.23. PGW Ex. 2.

6. If a complainant is eligible for a Commission-issued payment arrangement, they should be afforded the payment arrangement. *See, Bongiorno v. West Penn Power Co.*, Docket No. F-2022-3035093 (Opinion and Order entered June 5, 2023); *Reddinger v. Pa. Elec. Co.*, Docket No. F-2022-3032104 (Opinion and Order entered Feb. 28, 2023).

7. Complainant is eligible for a one-year payment arrangement on her non-CAP arrears. 66 Pa.C.S. § 1405(b)(3).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Sheena Hunter in *Sheena Hunter v. Philadelphia Gas Works* at Docket No. CF-2023-3039118 is sustained.

2. That, after entry of the Commission's Final Order in this case, Philadelphia Gas Works shall reconnect Complainant's gas service within 72 hours of payment of:

- A. Any reconnection fee Philadelphia Gas Works may assess, pursuant to 66 Pa.C.S. § 1407(a);
- B. If PGW so requires, payment of the \$971.50 non-CAP arrears.

3. That, Sheena Hunter shall make monthly payments consisting of her current budget bill plus one-twelfth (1/12<sup>th</sup>) of the non-CAP arrearage owed on the account, commencing with the first billing due date following the entry of the Commission's Final Order in this case, and continuing thereafter on the due date for the payment of each regular monthly bill.

