

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

Public Meeting held May 9, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman, Statement
Kimberly Barrow, Vice Chair
Ralph V. Yanora, Dissenting
Kathryn L. Zerfuss
John F. Coleman, Jr., Dissenting Statement

Joseph Hinton

C-2023-3042481

v.

West Penn Power Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) Arlene Ashton, issued on March 14, 2024, in the above-captioned proceeding. No Exceptions have 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 reverse the Initial Decision, consistent with this Opinion and Order.

History of the Proceeding

On August 22, 2023, Joseph Hinton (Complainant or Mr. Hinton) filed a Formal Complaint (Complaint) with the Commission against Philadelphia Gas Works (Respondent or PGW) in which he requested a new payment arrangement, specifically a Commission issued payment arrangement due to a change in income.¹

On September 14, 2023, Respondent filed an Answer in which it averred that the Complainant had defaulted on multiple payment arrangements, including several Company-issued payment agreements and multiple Commission-issued payment arrangements. Respondent requested that Mr. Hinton's Complaint be dismissed.

On October 2, 2023, the Commission issued a hearing notice setting an initial telephonic hearing for November 28, 2018, at 10:00 a.m. and the case was assigned to ALJ Ashton. A prehearing order was issued on October 11, 2023, advising the parties of the applicable hearing procedures.

The hearing convened as scheduled on November 28, 2023. Mr. Hinton appeared *pro se*, testified on his own behalf, but did not offer any exhibits. Anita Murray, Esquire, appeared on behalf of Respondent and presented the testimony of one witness, Ronda Cobb, a Customer Review Officer for PGW. Ms. Cobb sponsored three exhibits, which were admitted into the record:

¹ (“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.”) 66 Pa. C.S. § 1405(d). A change in income is defined as “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.” 66 Pa. C.S. § 1403.

Exhibit No. 1 – Statement of Account (3 pages)

Exhibit No. 2 – Negotiated Payment Arrangements
2/14/2005 through 7/05/2022 (2 pages)

Exhibit No. 3 – Summaries for BCS Case No. 3836293 and
BCS Case No. 3914498 (8 pages)

The record closed on December 19, 2023.

On March 14, 2024, the ALJ issued an Initial Decision denying the Complaint on the basis that Mr. Hinton failed to carry his burden of proof that he qualified for a second Commission-issued payment arrangement or an extension of the prior arrangement.

Discussion

A. Legal Standards

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 the Company 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 the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 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, also referred to as the burden of persuasion, to rebut the evidence of the customer shifts to the Company. If the evidence presented by the Company 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 the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983) (*Burleson*).

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. Cmwlth. 2001).

The Responsible Utility Customer Protection Act, 66 Pa. C.S. §§ 1401-1419 (Act), 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).

The Act also states the Commission is prohibited from establishing a second or subsequent payment arrangement, absent a change in income, in the event a customer defaults on a prior payment arrangement. Section 1405 of the Code, 66 Pa. C.S. §1405, regarding payment arrangements, reads in pertinent part:

(b) LENGTH OF PAYMENT AGREEMENTS. The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement 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) Two 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.

. . .

(d) Number of payment agreements. Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa. C.S § 1405.

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.

B. ALJ's Initial Decision

The ALJ made seventeen Findings of Fact and reached eleven Conclusions of Law. I.D. at 3, 5-6. 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 implications.

When requesting a payment arrangement in 2022, Mr. Hinton reported a household size of six, consisting of five adults and one child. At that time, he reported gross household monthly income of \$9,836.67. I.D. at 6.

At the hearing, Mr. Hinton testified about his current household size and income, indicating that his household consists of five individuals, four adults and one child. He also testified that his current gross monthly household income totals \$3,325.00, consisting of his earnings as an Uber driver and those of his son, who earns approximately \$1,700 per month as a warehouse worker. Mr. Hinton testified that his

wife has been unemployed since August 2023 and his daughter is also unemployed and her ability to work is “sporadic” due to health issues.² Tr. at 54; I.D. at 7.

The Complainant’s combined household income of \$3,325.00 falls below 100% of the Federal poverty guideline for a household of five.³ Since the decision in BCS Case No. 3836293 on July 1, 2022, the household size decreased by one person and household income decreased by \$6,511.76. The \$6,511.76 change in income represents a 66% decrease in household income. Having experienced a significant change in household income, the ALJ determined that Mr. Hinton is eligible for a Level 1 Commission-issued payment arrangement. I.D. at 8.

Mr. Hinton’s outstanding balance at the time of the evidentiary hearing was \$7,437.11. Tr. at 32; PGW Exhibit 1. As noted above, given his household size and income, under Section 1405(b), Mr. Hinton is eligible for a 60-month payment arrangement, which would result in a monthly payment of \$123.95 towards his outstanding balance, plus billing for actual usage. Assuming that the budget bill amount remains at the \$383 level in effect at the time of the July 2022 Commission-issued arrangement, the ALJ determined that the Complainant’s monthly bill would be \$506. I.D. at 8.

The ALJ stated that in light of the Complainant’s current financial condition, his failure to pay even one full payment under the July 2022 Commission-issued payment arrangement and his unwillingness or inability to ever pay more than \$300 in any month for gas service despite a much higher household income, it was highly

² In his testimony, Mr. Hinton stated that his daughter had filed a disability claim with Social Security but that her claim had been denied. Tr. at 52. He also testified that his son’s work was seasonal and was expected to cease after Christmas. Tr. at 26.

³ See Federal poverty guidelines, 88 Fed. Reg. 3424 (January 19, 2023). Also available at <http://aspe.hhs.gov/poverty>.

unlikely that he can or would make a monthly payment of \$506 under another Commission-issued payment arrangement. The ALJ opined that Complainant has a poor payment history and has demonstrated an inability or unwillingness to comply with payment arrangements established by PGW and the Commission. As a result, the ALJ concluded that the record in this matter does not support awarding the Complainant a second Commission-issued payment arrangement under 66 Pa. C.S. § 1405(d). I.D. at 9.

While the Complainant is not eligible for a second Commission-issued payment arrangement, a provision of the Act provides that the Commission may reinstate and extend a previously ordered payment arrangement in limited circumstances where the customer has defaulted on that payment arrangement. Specially, Section 1405(e) provides:

(d) Extension of payment arrangements.--If the customer defaults on a payment arrangement . . . 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. . . .

66 Pa. C.S. § 1405(e) (emphasis added). Further, “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; I.D. at 9-10.

As noted above, Mr. Hinton's current gross monthly household income is below 100% of the Federal poverty level.⁴ I.D. at 10. Thus, he may be eligible for reinstatement and extension of his July 1, 2022, BCS Case No. 3836293 payment arrangement if he defaulted on said arrangement as a result of at least one of the four prongs of the definition above. There was no evidence that the Complainant defaulted on his July 1, 2022, BCS payment arrangement as the result of the onset of a chronic or acute illness, catastrophic damage to his residence, or loss of residence. Thus, none of these prongs are applicable. Further, there was a decrease not an increase in Complainant's number of dependents in the household. I.D. at 10.

Based on the foregoing, the ALJ concluded that the Complainant had failed to carry his burden of proving that he qualified for a second Commission-issued payment arrangement or an extension of the prior one arrangement. Accordingly, the ALJ denied the Complaint.

C. Disposition

We note that any argument that we do not specifically address 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

⁴ See *Federal Register*, Vol. 88, No. 12, pp. 3424-3425 (January 19, 2023). Also available at <http://aspe.hhs.gov/poverty>.

(Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Upon review of the pleadings and applicable law, we shall reverse the Initial Decision consistent with this Opinion and Order.

After viewing the record, we disagree with the ALJ's decision to deny Mr. Hinton a subsequent Commission-issued payment arrangement in the instant matter. The record reflects that Mr. Hinton requested a payment arrangement in 2022, reporting a household size of five adults and one child and a monthly income of \$9,836.67.⁵ I.D. at 7. Mr. Hinton was awarded a Level 3 payment arrangement with a total monthly payment of \$741.00 to begin in August 2022.⁶ I.D. at 9. At the November 28, 2023 evidentiary hearing, Mr. Hinton reported a household size of four adults and one child and a monthly income of \$3,300.00, noting that his son's current employment is seasonal and will end in December, and that his wife and daughter are unemployed.⁷ I.D. at 7.

Mr. Hinton's reported monthly income in 2022 in comparison to 2023 represents a decrease of \$6,536.67, an approximate 66% decrease in income. A combined household income of \$3,300 for a household of five falls between 100%-125% of the Federal poverty guidelines.⁸ I.D. at 8. Accordingly, Mr. Hinton has met his burden of proving that he is eligible for a subsequent Commission issued payment arrangement.

⁵ Tr. at 37-39, 50-51; PGW Exhibit 3.

⁶ Tr. at 39-40; PGW Exhibit 3.

⁷ Tr. at 22-27, 52. Mr. Hinton reported earning a monthly income of \$1,600.00 and that his son earned a monthly income of \$1,700.00, totaling a household income of \$3,300.00.

⁸ *See* Federal poverty guidelines, 88 Fed. Reg. 3424 (January 19, 2023). Also available at <http://aspe.hhs.gov/poverty>.

Conclusion

Based on our review of the ALJ's Initial Decision, the pleadings, and the applicable law, we shall reverse the ALJ's Initial Decision, and sustain the Complaint, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Arlene Ashton, issued on March 14, 2024, is reversed, consistent with this Opinion and Order.
2. That the Formal Complaint of Joseph Hinton v. Philadelphia Gas Works at Docket No. C-2023-3042481 is sustained, consistent with this Opinion and Order.
3. That proceeding at Docket No. C-2023-3042481 is marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 9, 2024

ORDER ENTERED: July 10, 2024