

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

Public Meeting held July 11, 2024

Commissioners Present:

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

Pamela Bull

C -2023-3042007

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions, filed on February 14, 2024, by Pamela Bull (Complainant or Bull), excepting to the Initial Decision (I.D.) of Special Agent Michael J. Mroczka, issued on January 31, 2024. Philadelphia Gas Works (PGW or Company) filed Reply Exceptions on February 26, 2024. For the reasons stated below, we shall deny the Exceptions of the Complainant and adopt the Initial Decision of Special Agent Mroczka sustaining the Complainant's Formal Complaint (Complaint).

I. History of the Proceeding

On July 25, 2023, the Complainant filed a Complaint with the Commission¹ requesting, “[a] payment arrangement of \$136.00 a month. That is all I can afford. Disabled[.]” Complaint at ¶ 5. Under “Requested Relief” the Complainant noted, “[t]he amount the PUC chose as to [sic] high a month for me to pay [a]nd I never received that info by mail either. I am willing to pay \$136.00 a month, which was my previous payment amount agreement.” *Id.* at ¶ 6.

Bull’s requested relief was a reference to a prior Informal Complaint in this matter of the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3916335. Based on Bull’s statement in the Complaint, Special Agent Mroczka considered whether this matter should be treated as a timely appeal of a BCS decision, requiring *de novo* review. Noting that this matter was not docketed as an appeal from the BCS decision, Special Agent Mroczka found no Notice of Appeal filed within twenty (20) days, pursuant to 56 Pa. Code § 56.172, and considered the timeliness of the appeal. *Id.* at n.2. Special Agent Mroczka reasoned that the Complaint was a timely filed appeal, requiring *de novo* review, based on the considerations that the Complaint was filed within the fifty (50) days the Complainant would have had to file if a Notice of Appeal was filed. The Special Agent also noted that the Complainant averred she did not receive the determination of her Informal Complaint by BCS in the mail, and that PGW understood this matter to be an appeal of the BCS decision. *Id.*

PGW filed an Answer to the Complaint on August 22, 2023. PGW admitted and denied the various allegations of the Complaint and requested the Complaint be dismissed. Answer at 2.

¹ The Complaint is dated July 20, 2023, by the Complainant. However, the Commission notes receipt of the Complaint on July 25, 2023.

A Hearing Notice was issued on August 28, 2023, scheduling a hearing for October 24, 2023. A Prehearing Order was subsequently issued on September 25, 2023.

A hearing was held as scheduled on October 24, 2023. The Complainant appeared *pro se* and PGW appeared represented by counsel. PGW presented one witness and submitted three (6) exhibits. The record in this matter closed on November 8, 2023.

As mentioned *supra* the Initial Decision of Special Agent Mroczka was issued on January 31, 2024. Special Agent Mroczka's Initial Decision sustained the Complaint against PGW since the Complainant had "met her burden of proving she is eligible for a Commission-issued payment arrangement." I.D. at 1.

The Complainant timely filed Exceptions on February 14, 2024. Reply Exceptions were filed by PGW on February 26, 2024.

II. Discussion

A. Legal Standards

1. Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code (Code), the Complainant, as the proponent of a rule or order, bears the burden of proof. 66 Pa. C.S. §332(a). To satisfy the burden of proof, the Complainant, as the party seeking relief, must establish a sufficient case that PGW is responsible for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). This 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*, 602 A.2d 863 (Pa. 1992). This standard requires the Complainant's evidence to be more convincing, by

even the smallest amount, than the evidence presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). This Commission's decisions must be supported by substantial evidence in the record; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & West Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the evidentiary burden shifts to PGW to present persuasive evidence rebutting that of the Complainant. If PGW's evidence is of co-equal weight, the Complainant has not satisfied their burden of proof, and must provide additional evidence to rebut that of PGW. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd* 461 A.2d 1234 (Pa. 1983).

While the evidentiary burden of persuasion 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 to prove their case by a preponderance of the evidence. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Responsible Utility Consumer Protection Act

The Responsible Utility Consumer Protection Act (Act), 66 Pa. C.S. §§ 1401-1419, applies to consumer complaints alleging an inability to pay and requesting the Commission issue a payment arrangement. The Act imposes strict guidelines the Commission must follow in considering whether a payment arrangement can be issued, *inter alia*, 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.

66 Pa. C.S. § 1405(a)-(b).

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. 66 Pa. C.S. § 1405(d). The Act allows the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted because of a significant change in circumstances. 66 Pa. C.S. § 1405(e).

B. Initial Decision

Special Agent Mroczka’s Initial Decision sustains Bull’s Complaint, stating that the Complainant has met her burden of proving she is eligible for a Commission-issued payment arrangement. I.D. at 1.

In so deciding, Special Agent Mroczka considered several factors. In particular, the Initial Decision analyzes the household income of the Complainant. This analysis finds the Complainant has a total monthly household income of \$3,844 for a household of two individuals. I.D. at 6. This income and family size places Bull between 150% and 250% of the Federal poverty level. *Id.*, citing 88 Fed. Reg. 3424 (January 19, 2023). Special Agent Mroczka also pointed out that the Complainant had not previously been granted a Commission-issued payment arrangement. Based on these factors, the Initial Decision found that the Complainant had carried her burden and was eligible for a three-year payment arrangement under 66 Pa. C.S. § 1405(b)(2). *Id.*

The Initial Decision ordered that Bull “make monthly payments consisting of her current budget bill plus one-thirty-sixth (1/36th) of the arrearage owed on the account...” I.D. at 7. The Initial Decision also ordered that “as long as Pamela Bull maintains the terms of the payment arrangement ... Philadelphia Gas Works shall not suspend or terminate her utility service ...”, but if she “does not keep the payment schedule ... Philadelphia Gas Works is authorized to suspend or terminate her utility service ...” *Id.*

C. Exceptions

We note that the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to

the relevant pages of the Initial Decision. 52 Pa. Code § 5.533(b). Nevertheless, recognizing that the Complainant is appearing *pro se*, we will exercise our discretion pursuant to 52 Pa. Code § 1.2 to accept and review and consider the merits of the Exceptions, even though the Exceptions are not numbered and do not clearly identify the finding or conclusion to which exception is taken.

The Exceptions consist of a one-page, typewritten letter dated February 6, 2024. The Exceptions were received by the Commission on February 14, 2024, and state, in relevant part:

I explained that I also have monthly expenses that would not allow me to pay the amount of approximately \$1,400 to PGW as ordered by the PUC. I did inform everyone who was on that conference call that I was only able to afford to pay the \$136.00 that I have been paying to PGW each month.

I am asking for your grace and for a dismissal of all of the PGW charges against me.

* * *

Exc. at 1. The Exceptions reiterate the Complainant's request for a Commission-issued payment arrangement and ask the Commission to consider her monthly expenses in the analysis of her request for a Commission-issued payment arrangement. *Id.* In total, the Exceptions take issue with the analysis conducted by Special Agent Mroczka to arrive at the payment plan granted in the Initial Decision.

D. Reply Exceptions

PGW filed their Reply Exceptions on February 26, 2024. PGW initially notes that "Complainant's Exceptions fail to demonstrate that the Initial Decision is unsupported by the substantial evidence." R. Exc. at 3. PGW asserts that Special Agent

Mroczka’s Initial Decision properly considered the Complainant’s “disability income, along with her Social Security income, into consideration when reaching his legal conclusions and the resulting payment agreement terms.” *Id.*

PGW also argues that the Complainant has failed to point to “any legal regulation, statute, or case law” supporting her assertion that Special Agent Mroczka should have considered her monthly expenses in calculating the Commission-issued payment arrangement. R. Exc. at 3. PGW states the reason for this lack of citation is because Commission guidelines for Commission-issued payment plans do not contemplate consideration of monthly expenses. *Id.*

PGW asks the Commission to deny the Exceptions and sustain the Initial Decision, as the Initial Decision properly applied the strict guidelines outlined in 66 Pa. C.S. § 1405(a)-(b) by considering the Complainant’s size of household, gross monthly household income, and where that gross monthly income falls within the Federal poverty guidelines, and that the Initial Decision is supported by substantial evidence. R. Exc. at 3-4.

III. Disposition

We note that any argument or Exception not specifically addressed shall be deemed to be considered and denied without further discussion or consideration. The Commission is not required to consider expressly, or at length, each contention or argument made by the 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).

For the reasons set forth below, we shall deny Bull’s Exceptions and adopt the Initial Decision of Special Agent Mroczka issued on January 31, 2024.

We find that Special Agent Mroczka properly considered, weighed, and applied the evidence that the Parties presented and correctly found that Bull carried her evidentiary burden of showing eligibility for a Commission-issued payment arrangement. We, therefore, deny the Exceptions filed by the Complainant as the Initial Decision correctly considered the Complainant's gross monthly household income and size of the household.

The Complainant currently has a total monthly household income of \$3,844 for a household of two individuals. I.D. at 6. This monthly income and family size places Bull between 150% and 250% of the Federal poverty level.² *Id.*, citing 88 Fed. Reg. 3424 (January 19, 2023). Thus, based upon the clear language of 66 Pa. C.S. § 1405(b)(2), the Commission is authorized to establish a payment arrangement no longer than three (3) years or thirty-six (36) months for customers with total monthly household income at this level. We agree with the argument advanced by PGW that our Code limits the scope of our consideration and believe the Initial Decision properly applied the standard in our Code.

Accordingly, we adopt the well-reasoned Initial Decision of Special Agent Mroczka and deny the Exceptions in this matter.

IV. Conclusion

Based on the foregoing discussion and our review of the applicable law, the record, and the filings in this proceeding, we shall deny the Exceptions filed by Pamela

² Under the 2024 Federal Poverty Guidelines, the annual income for a family of two between the 150% and 250% level of the Federal poverty guidelines is \$36,660 - \$51,100. With a monthly income of \$3,844, the Complainant's annual income is \$46,128.

Bull, and adopt the Initial Decision issued by Special Agent Michael J. Mroczka on January 31, 2024, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

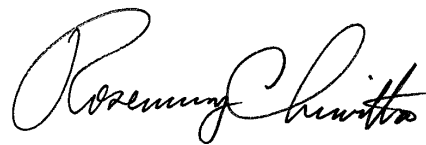
1. That the Exceptions of Pamela Bull filed on February 14, 2024, to the Initial Decision issued by Special Agent Michael J. Mroczka at Docket No. C-2023-3042007 on January 31, 2024, are denied, consistent with this Opinion and Order.

2. That the Initial Decision issued by Special Agent Michael J. Mroczka on January 31, 2024, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Pamela Bull on July 25, 2023, against Philadelphia Gas Works at Docket No. C-2023-3042007, is granted, consistent with this Opinion and Order.

4. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 11, 2024

ORDER ENTERED: July 11, 2024