

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marisa Diaz-Willis	:	
	:	
v.	:	F-2023-3045048
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of a gas service customer. Complainant’s claim that her mother’s balance was improperly transferred to her is dismissed as beyond the applicable statute of limitations. Complainant failed to meet her burden of proving that she was overbilled for her gas service, or that she is eligible for a second or subsequent Commission-issued payment arrangement, or reinstatement of her prior payment arrangement.

HISTORY OF THE PROCEEDING

On December 4, 2023, Marisa Diaz-Willis (Complainant or Ms. Diaz-Willis) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent).¹ Ms. Diaz-Willis checked the boxes on the Complaint form stating that the utility is threatening to shut off her service or has already shut off her service, that she is requesting a Commission-issued

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3915005, which dismissed Complainants’ informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

payment arrangement (PAR), and that there are incorrect charges on her bill. Under requested relief, Ms. Diaz-Willis asked for a \$3,000 credit to her account and a reasonable payment plan. Complainant stated that her bill was too high and that she inherited a PGW balance after her mother passed away.

On January 10, 2024, PGW filed its Answer and New Matter to the Complaint which admitted in part and denied in part the various material allegations of the Complaint. In its New Matter, PGW alleged that Complainant had a prior Commission-issued payment arrangement that included the transferred balance and that the balance transfer from August 30, 2019 is beyond the statute of limitations at 66 Pa.C.S. § 3314.

Also on January 10, 2024, PGW filed a Preliminary Objection to the Complaint alleging the balance transfer from August 30, 2019 is beyond the Statute of limitations at 66 Pa.C.S. § 3314.

By Hearing Notice dated January 24, 2024, an Initial Call-In Telephonic Hearing was scheduled for April 9, 2024, and the matter was assigned to me.

On February 24, 2024, Complainant filed a Reply to the Answer and New Matter and an Answer to the Preliminary Objection.

A Prehearing Order was issued and served on March 15, 2024, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On April 9, 2024, the hearing convened as scheduled. Ms. Diaz-Willis appeared *pro se*. Anita Murray, Esquire, appeared on behalf of PGW and presented testimony of one witness, David Kauffman, a customer review officer for PGW. The following exhibits were admitted into the record:

Complainant Exhibit 1 – Excel Monthly Bill Sheet
PGW Exhibit 1 – August 30, 2019 Customer Contact
PGW Exhibit 2 – BCS Informal Complaint 3743236

- PGW Exhibit 3 – Payment Arrangement History
- PGW Exhibit 4 – PGW Letter RE: Bill Dispute
- PGW Exhibit 5 – BCS Informal Complaint 3915005
- PGW Exhibit 6 – Customer Contact: Meter Exchange
- PGW Exhibit 7a – Statement of Account

Prior to the hearing, the parties presented oral argument on PGW’s Preliminary Objection. I held my decision on the Preliminary Objection in abeyance until after the hearing. PGW’s Preliminary Objection will be addressed below.

The record closed on May 2, 2024, when I received a copy of the 121-page transcript.

FINDINGS OF FACT

1. The Complainant is Maris Diaz-Willis who resides at 509 Westview Street, Philadelphia, Pennsylvania 19119 (Service Address). Tr. 24.
2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides gas service to Complainant at the Service Address.
3. Complainant resides at the service address with her husband and son. Tr. 34.
4. Complainant purchased the service address on November 12, 2008. Tr. 45.
5. Complainant’s gross monthly household income is \$4,000. Tr. 36.
6. Complainant’s household income falls between 150% and 250% of the Federal poverty guidelines.²

² See Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>

7. Complainant's outstanding balance at the time of the hearing was \$6,472.52. PGW Ex. 7a; Tr. 66.
8. Complainant received a Commission-issued payment arrangement on October 22, 2019 (October 2019 PAR). Tr. 56-58; PGW Exs. 2, 3.
9. Complainant broke the October 2019 PAR due to nonpayment. Tr. 37-38, 58.
10. Complainant was unable to keep up with the October 2019 PAR due to loss of income from the COVID-19 pandemic. Tr. 39.
11. Complainant received two company-issued payment arrangements which were broken by Complainant. PGW. Ex. 3; Tr. 58-60.
12. Complainant's gas service is used for heat, hot water, and a gas range. Tr. 29.
13. The service address is a 2,700 square foot, three story, five-bedroom home. Tr. 29, 46.
14. When Complainant's gas use is high, it coincides with a higher number of degree days (i.e. when the temperature was colder). PGW Ex. 7a.
15. Complainant's bills increased when PGW's rates increased and subsequently decreased when PGW's rates decreased. PGW Ex. 7a; Compl. Ex. 1.
16. PGW removed Complainant's meter for testing on October 16, 2023. Tr. 65; PGW Ex. 6.
17. The meter was tested on October 26, 2023. Tr. 65; PGW Ex. 6.

18. The meter tested accurately, within the two percent tolerance allowed under 52 Pa. Code § 59.22. Tr. 64-64; PGW Ex. 6.

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or not done by a public utility which violates any laws which the Commission has the authority to administer, or any regulation or order of the Commission. 66 Pa.C.S. § 701.

Section 332(a) of the 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 they present 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 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 Ctr.*, 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) (*Milkie*); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Preliminary Objection: Account Transfer

The Commission's Rules of Administrative Practice and Procedure provide for the filing of Preliminary Objections. 52 Pa. Code § 5.101. Commission Preliminary Objection practice is comparable to Pennsylvania civil practice in respect to the filing of preliminary objections. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). The Commission's Rules provide, in relevant part:

§ 5.101. Preliminary objections.

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

52 Pa. Code § 5.101(a).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Dept. of Auditor Gen. v. State Emp. 's Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emp. 's Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

PGW filed a Preliminary Objection alleging that Complainant's claim regarding the transfer of her mother's balance is beyond the statute of limitations at 66 Pa.C.S. § 3314.

The Public Utility Code (the Code) states:

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314(a). PGW argues that because the claims regarding the transfer are beyond the statute of limitations, the Commission does not have jurisdiction over the claim. However, preliminary objections must rely only on the facts alleged in the Complaint. *P.J.S.*, 669 A.2d at 1112. The date of the balance transfer is brought up only in PGW's Answer, New Matter and Preliminary Objections; therefore, the Preliminary Objections will be denied.

Notwithstanding the above, 52 Pa. Code § 1.2(a) allows the presiding officer or the Commission to disregard an error or defect of procedure which does not affect the substantive rights of the parties. Because Complainant had an opportunity to respond to the New Matter and Preliminary Objections, did respond to the New Matter and Preliminary Objections,

and was provided the opportunity to address this matter prior to the start of the hearing, I will treat the Preliminary Objections as a Motion to Dismiss the balance transfer claim.

It is clear from oral argument that Complainant's liability for the balance transfer arose on August 30, 2019. Tr. 4. Ms. Diaz-Willis filed her informal complaint on June 5, 2023, which was well beyond the three-year statute of limitations under 66 Pa.C.S. § 3314. Ms. Diaz-Willis does not deny the date which liability arose, instead, she finds the process in which liability was placed on her unfair (via credit report). Tr. 13. However, any claim regarding the reasonableness of the balance transfer is also beyond the statute of limitations. Therefore, PGW's Motion to Dismiss Complainant's claim regarding the balance transfer from August 2019 must be granted. Complainant's claim for improper balance transfer is dismissed.³

High Bill Dispute

Complainant has alleged that there are incorrect charges on her gas bill. As the Complainant in this matter, Ms. Diaz-Willis has the burden of proving that she was overbilled by PGW. 66 Pa.C.S. § 332(a).

Commission regulations provide tolerance standards for recording gas usage within an error variance of 2.0% or less as follows:

- (a) *Fast meters.* If, upon test of a meter, it is found to have an average error of more than 2.0% fast, the public utility shall refund to or credit the customer for the overcharge, based upon what the meter would have registered had it not been fast or slow for a period equal to 1/2 the time elapsed since the last previous test, but not to exceed 12 months or 1/2 the period of occupancy of the premises by the customer, whichever is less. If the period of registration error may be definitely fixed, the overcharge shall be computed for the period. If the meter has not been tested under § 59.21 (relating to meter tests), the period for which it has been in

³ While the statute of limitations renders the discussion moot, I do point out that since Complainant purchased the property on November 12, 2008, and as owner of the property, she is connected to the property since that date and ultimately liable for any arrearages that arose since that date.

service beyond the regular test period shall be included in computing the refund.

(b) *Slow meters.* If, upon test of a gas meter it is found to have an average error of more than 2.0% slow, the public utility may render a bill for the gas consumed but not covered by bills previously rendered, for a period equal to 1/2 of the time elapsed since the last previous test, but not to exceed 3 months. If the period of registration error may be definitely fixed, the charge may be computed for the period.

52 Pa. Code § 59.22(a)-(b).

Complainant's meter was tested on October 26, 2023. Tr. 65; PGW Ex. 6. The result of the test was that the meter averaged 0.8% fast, which is within the two percent limits required by section 59.22 of the Commission's regulations. PGW Ex. 6.

In cases of alleged high billing, the Commission applies the *Waldron* rule, which provides that to establish a *prima facie* case of overbilling, a complainant must show: (1) that the number of occupants in the household has not changed, (2) that the potential for energy utilization was low and (3) that the complainant's billing history shows no prior abnormalities. Once the complainant makes out a *prima facie* case, the burden of proof then shifts to the utility; however, the ultimate burden of persuasion always remains with the complainant. *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980); *Repogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980).

In *Milkie*, the Commonwealth Court of Pennsylvania further refined the *Waldron* rule by holding:

[w]hile the [*Waldron*] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a *prima facie* case of overbilling by a utility company, we believe this view is too restrictive. Rather, the controlling principle is that even where the utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may, nonetheless, prove his case by circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the

complainant is protected from dismissal because of his inability to marshal *direct* proof that his meter had malfunctioned.

Milkie, 768 A.2d at 1219-1220 (emphasis in original, footnote omitted) (citing *Burleson v. Pa. Pub. Util. Comm'n*, 461 A.2d 1234, 1235 (Pa. 1983)). In *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011) (*Thomas*), the Commission explained:

the *Waldron* Rule allows a complainant to establish a prima facie case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not *changed or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*”

Thomas, at 5 (emphasis in original) (citation omitted).

Complainant states that she filed the Complaint because there was a considerable increase in her monthly bills, especially in the winter months. Tr. 24. Ms. Diaz-Willis states that after the meter was replaced, the bills started to go back down. Tr. 28.

Complainant has been a PGW customer since August 2019. Tr. 57. The parties have provided the following information regarding Complainants gas usage and charges:

Usage Month		Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
2020	Bill Date											12/2/20	1/6/21
	Total CCF											199	400
	Degree Days											444	891
	Amount											\$299.29	\$561.95
2021	Bill Date	2/4/21	3/6/21	4/6/21	5/5/21	6/4/21	7/2/21	8/3/21	9/1/21	10/2/21	11/2/21	12/3/21	1/6/22
	Total CCF	385	417	202	137	50	18	15	14	16	42	275	364
	Degree Days	866	893	458	280	106	0	0	0	4	79	572	678
	Amount	\$561.69	\$580.47	\$304.51	\$200.29	\$75.32	\$38.44	\$35.33	\$34.01	\$39.03	\$107.18	\$413.19	\$678.40
2022	Bill Date	2/4/22	3/5/22	4/5/22	5/5/22	6/3/22	7/2/22	8/3/22	9/1/22	10/1/22	11/1/22	12/1/22	12/31/22
	Total CCF	532	412	258	154	38	18	20	11	17	143	303	450

Usage Month		Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
	Degree Days	973	698	473	327	49	0	0	0	14	209	444	816
	Amount	\$868.05	\$736.71	\$463.42	\$254.03	\$86.48	\$51.73	\$55.70	\$37.83	\$48.83	\$282.60	\$631.20	\$830.57
2023	Bill Date	2/1/23	3/1/23	3/31/23	5/2/23	6/1/23	6/30/23	8/1/23	8/30/23	9/30/23	10/31/23	12/1/23	1/3/24
	Total CCF	413	351	326	138	83	18	12	16	18	104	293	314
	Degree Days	678	617	592	244	123	3	0	0	17	130	539	637
	Amount	\$910.44	\$739.58	\$526.97	\$253.53	\$141.06	\$40.54	\$32.30	\$37.75	\$40.26	\$175.95	\$407.76	\$504.75
2024	Bill Date	2/1/24	2/29/24	3/29/24									
	Total CCF	446	343	227									
	Degree Days	893	700	483									
	Amount	\$686.07	\$547.12	\$384.27									

PGW Ex. 7a; Compl. Ex. 1. Complainant uses the gas service for heat, hot water and a gas range. Tr. 29. The bills show high consumption during winter months but show this on every bill during those months. Compl. Ex. 1; PGW Ex. 7a. Further, higher usage coincides with higher number of degree days. PGW Ex. 7a. Complainants' residence is a three story, 2,400 square foot single-family home with five bedrooms. The pattern of usage does not imply improper billing. Instead, the chart above shows steady CCF usage in conjunction with the degree days along with a fluctuation in that actual price of gas, i.e. the gas usage compared to how cold it was outside was similar but PGW's rates were higher. Comparing the February 4, 2022 bill (covering the January 2022 billing period) and the February 1, 2023 bill (covering the January 2023 billing period) it shows that the bill February 1, 2023 bill is higher although less gas was used. PGW Ex. 7a; Compl. Ex. 1. Further, the meter was replaced in October 2023, and the usage after the change remained consistent. Any price reduction after the meter exchange was due to reduced gas costs. See Compl. Ex. 1. Finally, the total gas used per year from April 2020 through April 2024, is consistent. See PGW Ex. 4 at 5.

Complainant has not shown a change in usage patterns or provided any other evidence showing that she was incorrectly billed and therefore has failed to present a *prima facie* case of overbilling. Accordingly, I conclude that Complainant has not proven the allegation of overbilling by a preponderance of the evidence.

Payment Arrangement

Complainant requests a Commission-issued payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applies to complaints

that allege an inability to pay and request 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)–(c) of 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.

* * *

(d) Number of payment arrangements. — 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. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(a)–(b), (d).

Complainant’s total gross monthly household income is \$4,000. Tr. 36. Complainant has a household size of three. Tr. 34. Based on Complainant’s gross household income of between \$4,000, and the household size of three, Complainant is between 150% and 250% of the Federal poverty level.⁴ Absent further restriction, Ms. Diaz-Willis would be eligible for a Level 2 payment arrangement. 66 Pa.C.S. § 1405(b)(2), (d). However, as described below, Ms. Diaz-Willis has had a prior Commission-issued payment arrangement; therefore, further evaluation is necessary.

Second or Subsequent Payment Arrangement

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. However, the Code restricts the Commission from issuing a second or subsequent payment arrangement if a customer defaulted on a previous Commission-issued payment arrangement. The Code addresses second or subsequent payment arrangements as follows:

(d) Number of payment arrangements. — 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. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

66 Pa.C.S. § 1405(d). “Change in income” is defined by the Code as “[a] decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the Federal

⁴ See Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>

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.

Ms. Diaz-Willis was granted a prior Commission-issued payment arrangement on October 22, 2019. PGW Ex. 2; Tr. 56-58. The October 2019 PAR provided Complainant with a Level 2 payment arrangement on her balance of \$2,068.78. PGW Ex. 2. Tr. 56-58. In granting the October 2019 PAR, Ms. Diaz-Willis's total household income was determined to be \$4,000 per month with a household size of four. PGW Exs. 2; Tr. 56-57. Complainant defaulted on the October 2019 PAR. Tr. 37-38, 58; PGW Ex. 3.

Complainant's income is below 200% of the Federal poverty level. Therefore, she would need to show at least a 10% decrease in her household income to meet the “Change in income” definition under the statute to qualify for a second Commission-issued payment arrangement. Currently, as explained above, Ms. Diaz-Willis's household income is \$4,000 per month, which is the same as the income determined in the October 2019 PAR. Because Ms. Diaz-Willis has not had a decrease in income of 10% or more, the Commission is not permitted to grant her a second or subsequent payment arrangement under the Code. 66 Pa.C.S. §§ 1403, 1405(d).

Reinstatement of Prior Payment Arrangement

Although Ms. Diaz-Willis is not eligible for a second Commission-issued payment arrangement, I must next determine if she is eligible for reinstatement and extension of the October 2019 PAR. Chapter 14 authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted as a result of a significant change in circumstance:

(e) Extension of payment arrangements. — If the customer defaults on a payment arrangement established under subsections (a) and (b) 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. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). A “significant change in circumstance” is defined in the Code as follows:

“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.

Ms. Diaz-Willis testified that the October 2019 PAR was broken due to loss of income during the COVID-19 Pandemic. Tr. 39. Complainant did not allege that she lost income due to becoming ill with COVID-19. There was no evidence presented regarding whether Complainant qualified for any of the other significant changes in circumstances. Therefore, the Code, as written, does not permit the Commission to reinstate the October 2019 PAR. Accordingly, the Complainant's request for a Commission-issued payment arrangement will be denied and the Complaint will be dismissed.

While the Commission is not permitted to establish a second or subsequent payment arrangement in this matter, “[a] public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.” 66 Pa.C.S. § 1405(d). Ms. Diaz-Willis is encouraged to seek any grants or assistance that may be available to help with her arrearage with PGW. PGW is encouraged to work with Ms. Diaz-Willis to find a mutually acceptable solution to this matter.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. §§ 701, 1401–1419.

2. The Complainant has the burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

3. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part. 66 Pa.C.S. § 3314(a).

4. The Complainant's claim of improper balance transfer is beyond the statute of limitations. 66 Pa.C.S. § 3314(a).

5. A complainant must show, by a preponderance of the evidence, 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); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976).

6. The decision of the Commission must be supported by substantial evidence or 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. 2 Pa.C.S. § 704; *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 Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

7. Once 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*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

8. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401–1419.

9. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).

10. In a high bill proceeding, the Commission will consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (1980); *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011).

11. The Complainant has failed to carry her burden of proving that she was overbilled for her gas usage. 66 Pa.C.S. § 332(a).

12. 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).

13. If the customer defaults on a payment arrangement established under section 1405 subsections (a) and (b) 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).

14. The Complainant has failed to carry her burden of proving that she is eligible for a second or subsequent Commission-issued payment arrangement or an extension of her prior Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1405(d)-(e).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works's Preliminary Objection, treated as a Motion to Dismiss the claim of improper balance transfer, is granted, and the claim is dismissed.
2. That the Formal Complaint filed by Marisa Diaz-Willis in Marisa Diaz-Willis v. Philadelphia Gas Works at Docket No. F-2023-3045048 is denied and dismissed.
3. That Docket No. F-2023-3045048 be marked closed.

Date: July 30, 2024

/s/
Michael J. Mroczka
Special Agent