

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

Public Meeting held August 22, 2024

Commissioners Present:

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

Donovan Jacob Adams

C-2023-3043707

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 by Donovan Jacob Adams (Complainant), on July 15, 2024, to the Initial Decision (I.D.) of Administrative Law

Judge (ALJ) Eranda Vero, which was issued on June 24, 2024.^{1,2} Philadelphia Gas Works (PGW or the Company) filed its Reply to Exceptions on July 26, 2024. For the reasons stated below, we shall deny the Exceptions of the Complainant and dismiss the Formal Complaint (Complaint).

I. History of the Proceeding

On October 19, 2023, the Complainant filed the instant Complaint with the Commission against PGW.³ The Complainant alleged that: (1) PGW was threatening to shut off or has already shut off his gas service; (2) that the Complainant is unable to pay his outstanding balance with PGW; and (3) that there are incorrect charges on his gas bills from PGW. As relief, the Complainant requested a Commission-issued payment arrangement. Complaint at 2-3.

On November 13, 2023, PGW filed an Answer which admitted, in part, and denied, in part, various material allegations of the Complaint. PGW averred that the

¹ On July 2, 2024, the Commission's Secretary issued a Secretarial Letter (*July 2024 Secretarial Letter*) to All Parties of Record indicating that a Formal Complaint form was received from the Complainant on July 1, 2024, in an attempt to file Exceptions to the Initial Decision. The *July 2024 Secretarial Letter* explained that the Formal Complaint form: (1) cannot be used to file Exceptions; (2) was not an acceptable filing; and (3) was rejected and returned to the Complainant. The *July 2024 Secretarial Letter* directed the Complainant to file Exceptions in accordance with 52 Pa. Code § 5.533 no later than July 25, 2024, and to serve PGW with a copy of the Exceptions pursuant to 52 Pa. Code § 1.58. The *July 2024 Secretarial Letter* further provided that PGW had until August 5, 2024, to file Reply Exceptions. *July 2024 Secretarial Letter* at 1.

² On July 16, 2024, the Commission's Secretary served the Exceptions on All Parties of Record stating that its review of the filing revealed no Certificate of Service or other indication that the Parties of Record to the case were served with Exceptions.

³ This Complaint is an untimely appeal of the decision of the Commission's Bureau of Consumer Services (BCS), at BCS Case No. 3915809, issued on June 27, 2023, dismissing the Complainant's Informal Complaint. See PGW Exh. 3 at 33.

Complainant has defaulted on two (2) PGW-issued payment agreements and one (1) Commission-issued payment arrangement. PGW requested that the Commission deny all relief requested in the Complaint and dismiss the Complaint. Answer at 1-2.

On March 1, 2024, a telephonic hearing was held in this matter. The Complainant appeared *pro se* and testified on his own behalf.⁴ PGW was represented by counsel, presented the testimony of one (1) witness, and offered five (5) exhibits which were admitted into the record. The record closed on March 25, 2024. I.D. at 2.

On June 24, 2024, the Commission issued the Initial Decision of ALJ Vero, in which she found that the Complainant failed to meet his burden of proof and denied the Complaint. Namely, the ALJ ruled that the Complainant already received one Commission-issued payment arrangement and defaulted on it for non-payment, and that the Complainant is not eligible for a subsequent Commission-issued payment arrangement because his household income has increased. I.D. at 1, 7, 8.

As noted, *supra*, the Complainant filed Exceptions on July 15, 2024. PGW filed its Reply to Exceptions on July 26, 2024.

II. Discussion

A. Legal Standards

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at

⁴ At the hearing, the Complainant did not pursue his improper termination or incorrect charges claims against the Respondent. I.D. at 4.

length each contention or argument raised 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).

1. Burden of Proof

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 Public Utility Code (Code). 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that PGW is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 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*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PGW. *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. 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, to rebut the evidence of the Complainant, shifts to PGW. If the evidence presented by PGW is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some 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 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. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. Responsible Utility Customer Protection Act

The Responsible Utility Customer Protection Act (Act), 66 Pa.C.S. §§ 1401-1419, applies to complaints alleging the inability to pay and requesting a Commission-issued payment arrangement. This Act provides strict guidelines that the Commission must follow when determining 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.

66 Pa.C.S. § 1405(a).

However, the Act also provides certain limitations that the Commission must follow, including which account balances cannot be subject to payment arrangements and the number of payment arrangements that may be issued. Specifically, the Act states that the Commission is prohibited from establishing a second or subsequent payment arrangement, absent a change of income, if the customer defaults on a prior payment arrangement. Section 1405(d) of the Code states the following with regard to the establishment of Commission-issued payment arrangements:

- (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).⁵

Furthermore, the Act authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted as a result of significant change in circumstances. Section 1405(e) provides:

- (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

⁵ 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.

initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e).⁶

B. Positions of the Parties

The Complainant requested a Commission-issued payment arrangement. Complaint at 2-3. At the hearing, the Complainant testified that he resides by himself at the service address, and the current gross household income is \$1,354.60 every two weeks, or \$2,934.90 per month. I.D. at 3, 7, citing Tr. at 14-15.

PGW requested that the Commission dismiss the Complaint. Answer at 2. PGW's witness testified that, as of March 1, 2024, the Complainant's outstanding balance was \$8,069.67. I.D. at 3, citing Tr. at 23-25; PGW Exh. 1. In addition, PGW's witness testified that the Complainant has defaulted on a Commission-issued payment arrangement, which was established in February 2020, as well as two (2) prior PGW-

⁶ A "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.

issued payment arrangements. I.D. at 4, citing Tr. at 10, 26-27, 31; PGW Exhs. 1, 3 and 4. Also, from October 15, 2020, to March 1, 2024, the date of the hearing, the Complainant made only four (4) payments to his account with PGW, for a total of \$845.60. I.D. at 3, citing Tr. at 25; PGW Exh. 1.

C. Initial Decision

The ALJ made fourteen (14) Findings of Fact and reached six (6) Conclusions of Law. I.D. at 3-4, 7-8. 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 implication.

In addressing the Complainant's request for a payment arrangement, the ALJ explained that the Act provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement. Specifically, the ALJ explained that Section 66 Pa.C.S. § 1405(d) provides that absent a change in income, the Commission may not establish or order a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by the Commission. I.D. at 6, citing 66 Pa.C.S. § 1405(d).

The ALJ concluded that the Commission cannot establish a second Commission-issued payment arrangement or order another PGW-issued payment agreement for the Complainant. The ALJ explained that the Complainant previously defaulted on a Commission-issued payment arrangement for non-payment which was

issued on February 11, 2020,⁷ based on a gross monthly income of \$1,243 and a household size of two (2). The ALJ noted that the Complainant testified that his current household income is \$1,354.60 bi-weekly, \$2,934.90 per month, from his employment with the City of Philadelphia, which represents an increase in gross household income that he reported when the prior Commission-issued payment arrangement was established. The ALJ further noted that the number of people in the Complainant's household has also decreased from two (2) to one (1). Due to the increase in income experienced by the Complainant, the ALJ concluded that the Complainant is not eligible for a subsequent Commission-issued payment arrangement. Furthermore, the ALJ stated that the Complainant has not made a good faith effort to pay his outstanding balance to PGW because he only made four (4) payments, totaling \$845.60, over a period of forty (40) months, from October 2020 to March 2024. I.D. at 7.

In light of the above, the ALJ found that the Complainant failed to carry his burden of proving that he is entitled to a second Commission-issued payment arrangement. Therefore, the ALJ denied the Complaint. I.D. at 1, 6.

D. Exceptions⁸ and Reply to Exceptions

The Complainant's Exceptions consist of a two-paragraph handwritten letter in which the Complainant takes exception to the ALJ's Initial Decision. The

⁷ The Initial Decision appears to have inadvertently included the date the first Informal Complaint was opened, July 2, 2019, rather than the correct date that it was closed and the decision was issued, February 11, 2020. *See also*, PGW Exh. 3 at 1, 3.

⁸ 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 accept the Exceptions as filed, pursuant to Section 1.2(a) of our Regulations, and consider the merits.

Complainant states that he disagrees with and contests the ALJ's Initial Decision, and that the amount that PGW requested he pays is "out of [his] budget." The Complainant avers that he is willing to make payments that he can afford in order to continue to receive gas service from PGW which he needs for hot water, cooking, and heating. Exc. at 1.

In its Reply to Exceptions, PGW submits that the Complainant's Exceptions fail to demonstrate that the Initial Decision is unsupported by substantial evidence and did not identify and discuss any alleged errors of law or fact. Rather, PGW argues that the Complainant is simply attempting to re-litigate this matter as he stated that he disagrees with the Initial Decision and reiterated his request for an affordable Commission-issued payment arrangement. PGW further submits that the Commission should sustain the Initial Decision because the Complainant failed to meet his burden of proof, and establish, by a preponderance of the evidence, his claims against PGW. PGW states that the ALJ properly determined that the Complainant failed to establish that he is entitled to a second Commission-issued payment arrangement because: (1) he defaulted on a prior one; (2) he failed to demonstrate a change in circumstance because his gross monthly income has increased and his household size has decreased; and (3) he has not shown a good faith effort to pay his outstanding balance owed to PGW because he has only made four (4) payments over a forty (40) month period. Furthermore, PGW contends that the ALJ considered all of the evidence and properly applied the facts to the applicable law. Finally, PGW argues that the Initial Decision is supported by substantial evidence. For these reasons, PGW requests that the Commission deny the Complaint and adopt the Initial Decision. R. Exc. at 2-3.

E. Disposition

Upon our review and consideration of the record evidence, the Complainant's Exceptions, and the applicable law, we find that the Complainant has

failed to meet his burden of proving that he is entitled to a Commission-issued payment arrangement. As noted above, the Act provides strict guidelines that we must follow in handling customer complaints. Under the Act, we may grant one (1) payment arrangement consistent with the terms set forth in 66 Pa.C.S. § 1405(b). If the customer defaults on this arrangement, we cannot grant a second or subsequent payment arrangement absent a change of income. Similarly, we may not extend a payment arrangement absent a significant change in circumstance. 66 Pa.C.S. §§ 1403, 1405(d)-(e).

As noted above, the record shows that the Complainant received a Commission-issued payment arrangement in February 2020, upon which he defaulted. I.D. at 7, citing Tr. at 10, 26-27; PGW Exhs. 1 and 3. Furthermore, the Complainant did not present any evidence or make a showing of either a change in income or a significant change in circumstance after defaulting on the previously Commission-ordered payment arrangement. In fact, the record evidence shows that the Complainant has experienced an increase in household income, along with a decrease in the number of people in his household. *Id.* at 7. Therefore, pursuant to 66 Pa.C.S. § 1405(d)-(e), we cannot issue another payment arrangement, or reinstate and extend the payment arrangement, for the Complainant. Accordingly, the Complainant's Exceptions shall be denied.

Finally, we note that the Complainant's total balance due on the gas service account as of March 1, 2024, was \$8,069.67. I.D. at 3, citing Tr. at 23-25; PGW Exh. 1. In addition, the Complainant's payment history has been poor, which is demonstrated by the fact that, during the forty (40) month period from October 2020 to March 2024, the Complainant made only four (4) payments, totaling \$845.60, to his account with PGW. *Id.* at 3, 7, citing Tr. at 25; PGW Exh. 1. Moreover, the Complainant has defaulted on two (2) PGW-issued payment arrangements that were established in May 2021 and November 2021, respectively. *Id.* at 4, citing Tr. at 31; PGW Exh. 4. As noted above, the Complainant has also defaulted on a Commission-issued payment arrangement

established in February 2020. *Id.*, citing Tr. at 10; PGW Exh. 1. We agree with the ALJ's Finding of Fact No. 9 that the Complainant has not made a good faith effort to pay his outstanding balance to PGW. *See* I.D. at 3, citing TR. 25; PGW Exh. 1.

We are compelled to remind the Complainant that a public utility is entitled to full payment for service provided to customers, and there is an obligation for all customers to pay for the utility service provided to them. Otherwise, unpaid customer's bills are included in the utility's uncollectibles expense and, ultimately, paid for by the other remaining utility customers. *Mill v. Pa. PUC*, 447 A.2d (Pa. Cmwlth. 1982); *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982). Also, payment arrangements are contractual arrangements between the customer and utility company that should be honored by the customer, not used to avoid payment altogether. *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Initial Decision issued December 30, 2013, adopted by Opinion and Order entered April 23, 2014) - I.D. at 28. The Complainant is strongly encouraged to satisfactorily address his large outstanding account balance with PGW immediately.

Furthermore, we remind PGW that utilities are obligated to protect all customers from those that refuse to pay with the tools provided by the Code and the Commission's Regulations, including terminating overdue unpaid accounts. *See Pa. PUC v. North Heidelberg Sewer Co.*, Docket No. M-2018-2645983 (Order entered February 9, 2018). We encourage PGW to take the necessary steps and actions under the Code and our Regulations to mitigate the negative effects on its overall customer base from the actions of individual customers who accumulate large and unreasonable outstanding balances.

III. Conclusion

Based on our review of the Exceptions, the Initial Decision, and the record in this proceeding, we shall deny the Exceptions of Donovan Jacob Adams and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Donovan Jacob Adams, filed on July 15 2024, at Docket No. C-2013-3043707, to the Initial Decision of Administrative Law Judge Eranda Vero are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Eranda Vero, issued on June 24, 2024, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Donovan Jacob Adams on October 19, 2023, against Philadelphia Gas Works at Docket No. C-2023-3043707, is denied and dismissed, consistent with this Opinion and Order.

4. That this proceeding be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024