

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

Public Meeting held December 5, 2024

Commissioners Present:

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

Christopher Haymes

C-2024-3047840

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Mr. Christopher Haymes (Complainant or Mr. Haymes), filed on October 4, 2024, in the above-captioned

proceeding.¹ The Exceptions were filed in response to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) F. Joseph Brady, which the Commission served on the Parties on September 18, 2024. On October 28, 2024, PGW filed Reply Exceptions. For the reasons discussed below, we shall deny the Complainant's Exceptions; adopt the Initial Decision of ALJ Brady; and dismiss the Complaint, consistent with this Opinion and Order.

I. Procedural History

On March 26, 2024, the Complainant filed a Formal Complaint (Complaint) against PGW alleging, *inter alia*, that the Company was threatening to shut off his gas service and has been charging him incorrectly. As relief, the Complainant requested a payment arrangement. I.D. at 1; Complaint at 2.

On April 15, 2024, PGW filed an Answer to the Complaint (Answer) denying the material allegations in the Complaint. I.D. at 1; Answer at 1.

On April 29, 2024, the Complainant filed one page of additional correspondence.

¹ By Secretarial Letter dated October 7, 2024 (*October 2024 Secretarial Letter*), the Commission's Secretary: (1) issued a notice to the Parties indicating that there was no Certificate of Service or other indication that the Exceptions were served on the Parties; and (2) enclosed the Exceptions, in order to constitute service under 52 Pa. Code § 5.533. *October 2024 Secretarial Letter*. We note that comments in the Commission's case management system indicate that in response to a technical error, all documents served by the Commission between October 4, 2024 and October 16, 2024, were re-served on October 18, 2024. Therefore, pursuant to 52 Pa. Code § 5.535, Philadelphia Gas Company (PGW or the Company) was given ten days, or until October 28, 2024, to file Reply Exceptions.

On June 13, 2024, an Initial Telephonic Hearing was convened as scheduled.² The Complainant appeared *pro se* and testified on his own behalf. PGW was represented by counsel. I.D. at 2.

At the outset of the hearing, the Complainant confirmed that he wished to withdraw his Complaint because he already had a pending formal complaint before the Commission, at Docket No. F-2023-3042824 (*2023 Haymes Complaint*). Counsel for PGW did not object to the Complainant's request. I.D. at 2; Tr. at 5.

On June 21, 2024, the record closed upon the filing of the hearing transcript. I.D. at 2.

In the Initial Decision issued on September 18, 2024, the ALJ granted the Complainant's request to withdraw his Complaint because there was no objection to the request and granting the request was in the public interest. I.D. at 1, 4.

As previously noted, the Complainant filed Exceptions on October 4, 2024. On October 28, 2024, PGW filed Reply Exceptions.

II. Discussion

A. Legal Standards

1. Buren 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 Code, 66 Pa.C.S. § 332(a).

² By Hearing Notice dated April 19, 2024, a Telephonic Hearing was scheduled for June 13, 2024. I.D. at 2.

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. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990) (*Patterson*). 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) (*Lansberry*). 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*, 364 Pa. 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 the Company. If the evidence presented by the Company is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983). 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).

2. Petition for Leave to Withdraw

Section 5.94 of the Commission's Regulations states the following:

Section § 5.94 **Withdrawal of pleadings in a contested proceeding.**

- (a) Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

* * * *

52 Pa. Code § 5.94(a).

B. ALJ's Initial Decision

In the Initial Decision, ALJ Brady made eight (8) Findings of Fact and reached four (4) Conclusions of Law. I.D. at 2-3, 4-5. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ addressed the Commission's Rules of Practice and Procedure at 52 Pa. Code § 5.94(a), which permit parties to petition to withdraw pleadings in a contested proceeding. Specifically, the ALJ noted that the petition is granted only by permission of the presiding officer or the Commission, and the presiding officer or

Commission must consider the petition, any objections thereto, and the public interest in determining whether to permit withdrawal of the pleading. I.D. at 3 (citing 52 Pa. Code § 5.94). The ALJ added that particularly in proceedings involving *pro se* litigants, a presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party. I.D. at 3-4 (citing 52 Pa. Code §§ 1.2(a), (c), (d)). As such, the ALJ treated the Complainant's request under oath, that he wishes to withdraw his Complaint, as a Petition for Leave to Withdraw the Complaint. I.D. at 4.

The ALJ found that under the circumstances, it was in the public interest to grant the Complainant's request to withdraw the Complaint because doing so would eliminate the need for litigation and save the Parties any additional costs in time and money they would otherwise incur litigating a case that was already before the Commission. Accordingly, the ALJ granted the Complainant's Petition for Leave to Withdraw the Complaint. I.D. at 4.

C. Exceptions³

In his Exceptions, the Complainant contends that despite his attempts to contact PGW to "work something out," the Company, essentially, has not been helpful to his situation. Further, the Complainant claims that PGW has been "belittle[ing] and bully[ing]" him and his family, and the attorney for the Company is "on a personal mission to hurt [his] family." Moreover, the Complainant disputes the amount that he

³ We acknowledge that the format of the Complainant's Exceptions do not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exceptions is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) and (d) of our Regulations, 52 Pa. Code § 1.2(a) and (d), to secure a just, speedy, and inexpensive determination.

owes PGW, explaining that after he received a letter from PGW stating that he owes “2900,” he called the Company and was told that “its 3850” and he was “due to be shut off on Monday” without notice. Furthermore, the Complainant claims that “they reversed a payment that was paid out from an estate and stuck us with the bill.” Furthermore, the Complainant states the following:

I had one letter from the [Commission] stating that the case was closed and there was nothing we could do, then I got another letter from the [Commission] saying we can appeal this case. [sic]

The Complainant closes his Exceptions by requesting to: (1) “tell the judge all the horrific things that PGW has been doing;” and (2) to get his bill corrected. Exc. at 1.

D. Replies to Exceptions

In its Replies, PGW counters that the Complainant’s Exceptions fail to demonstrate or allege that the Initial Decision is unsupported by the law or Mr. Haymes’ own request. PGW submits that the Complainant’s behavior in this matter is “another example of his playing fast and loose with the Commission’s procedures in order to abuse the process provided to benefit himself.” Further, PGW notes that the *2023 Haymes Complaint*, which was pending before the Commission at the time of the hearing in the instant case, was dismissed, with prejudice, based on the Complainant’s failure to appear for the hearing to prosecute his complaint in that proceeding. Moreover, PGW notes that the Commission granted the Company’s Motion to preclude the Complainant from filing any further informal or formal complaints until his outstanding balance is paid in full. R. Exc. at 2.

E. Disposition

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 length, each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlt. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

Based on our review of the record in this proceeding, the Exceptions, and the Replies thereto, we shall deny the Complainant's Exceptions.

At the outset, we note that the ALJ's Initial Decision granted the Complainant's request to withdraw his Complaint, treated the request as a Petition for Leave to Withdraw the Complaint, and closed the Docket.⁴ *See* I.D. at 4-5. On that basis alone, the Complainant's Exceptions must address the withdrawal of the Complaint. However, the Complainant's Exceptions do not address the withdrawal of the Complaint, rather, the Exceptions raise substantive matters not reached in the Initial Decision. Therefore, on these grounds alone, the Complainant's Exceptions should be denied.

As previously discussed, the ALJ granted the Complainant's Petition for Leave to Withdraw the Complaint because, ALJ Brady concluded, it is in the public interest, as doing so would eliminate the need for litigation and additional time and money that the Parties would otherwise incur for litigating a case that is already pending before the Commission (*i.e.*, the *2023 Haymes Complaint*). *See* I.D. at 4.

⁴ 52 Pa. Code § 5.571(d)(2) allows the Commission to reopen the record after the presiding officer has issued a decision or certified the record to the Commission.

In his Exceptions, the Complainant disputes charges on his bill and makes general allegations of harassment by the Company and its counsel. However, the Complainant has failed to provide supporting reasons for his Exceptions, as required by Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b). Moreover, as noted by PGW, Mr. Haymes has failed to identify any findings of fact or conclusions of law in the Initial Decision to which he objects. *See*, PGW R. Exc. at 2; *see also* I.D. at 4. Indeed, the Complainant neither acknowledges nor challenges the ALJ's basis for granting Mr. Haymes' Petition for Leave to Withdraw the Complaint.

Notwithstanding the Complainant's failure to identify or challenge any findings of fact or conclusions of law in the Initial Decision, we note the circumstances that resulted from the proceeding for the *2023 Haymes Complaint*. Specifically, by Opinion and Order entered August 22, 2024 (*August 2024 Haymes Order*), the Commission adopted the Initial Decision of ALJ Marta Guhl, issued on April 23, 2024 (*April 2024 Haymes Initial Decision*). More specifically, as noted by PGW, in the *August 2024 Haymes Order*, the Commission: (1) dismissed Mr. Haymes' formal complaint against PGW (*i.e.* the *2023 Haymes Complaint*), with prejudice, because Mr. Haymes failed to appear for his hearing and prosecute his formal complaint; and (2) granted PGW's motion to bar Mr. Haymes from filing any further informal or formal complaints related to his outstanding balance, until such time as that balance is paid. *See, August 2024 Haymes Order* at 14; *April 2024 Haymes Initial Decision* at 1, 13.

Due to the nature of the substance of the Disposition in the *August 2024 Haymes Order*, we find it appropriate to reprint a sample passage, as follows:

We note that the Complainant has filed nine (9) informal and three (3) formal complaints, all requesting relief in the form of a payment arrangement. The Complainant has received four (4) PGW-issued payment arrangements and one (1) Commission-issued payment arrangement, all of which the Complainant has broken due to non-payment. When looking

at the Complainant's payment history, we find that he has made just eighteen (18) payments since opening his PGW account in August of 2013. The Commission has held that when a complainant has used a variety of means to avoid termination and unnecessarily prolong the proceedings, the Commission must reach a point where it acts to protect the interest of the other ratepayers, who will otherwise ultimately bear the burden of that Complainant's growing arrearage. *See, Sherry Seidenstricker v Metropolitan Edison Company*, Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009).

We agree with the ALJ that PGW carried its burden of proof on this issue; it established *a prima facie* case that the Complainant has abused the Commission's process, and the Complainant has failed to rebut that case. The preponderance of the evidence clearly establishes that the Complainant has abused the Commission's administrative process to receive continuous gas service while his arrearage continues to increase. We conclude that the Complainant's Exception on this issue is without merit. For the above reasons, this Exception is denied. Accordingly, we shall adopt the Initial Decision of ALJ Guhl.

August 2024 Haymes Order at 12-13. Accordingly, it was ordered, *inter alia*, that Commission staff (including, but not limited to, the Commission's Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaints that Mr. Haymes, or any member of his family, or any other person, may attempt to file with the Commission, pertaining to his PGW customer account, until the entire balance is paid in full. *See, August 2024 Haymes Order* at 14, Ordering Paragraph No. 4.

We find that the Complainant's failure to address the withdrawal of his Complaint, granted by ALJ Brady on the Complainant's request coupled with the circumstances described in the *August 2024 Haymes Order* necessitate the denial of Complainant's Exceptions in the instant proceeding. Therefore, we shall deny the

Complainant's Exceptions, and adopt the ALJ's Initial Decision approving the Complainant's request to withdraw the Complaint.

III. Conclusion

Based upon our review of the record and the applicable law, we shall deny the Complainant's Exceptions and adopt the Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Christopher Haymes on October 4, 2024, at Docket No. C-2024-3047840, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on September 18, 2024, at Docket No. C-2024-3047840, is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed on March 26, 2024, by Christopher Haymes against Philadelphia Gas Company, at Docket No. C-2024-3047840, is withdrawn.

4. That this proceeding at Docket No. C-2024-3047840 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being the most prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 5, 2024

ORDER ENTERED: December 5, 2024