

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Wallace	:	
	:	
v.	:	F-2024-3048205
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Michael J. Mroczka  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of a gas service customer seeking a payment arrangement because he failed to meet his burden of proving that he is eligible for a second or subsequent Commission-issued payment arrangement or reinstatement of his prior payment arrangement.

**HISTORY OF THE PROCEEDING**

On April 3, 2024, Kevin Wallace (Complainant or Mr. Wallace) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent).<sup>1</sup> Mr.

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<sup>1</sup> The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (“BCS”), at BCS No. 3946911, which

Wallace checked the boxes on the Complaint form stating that the utility is threatening to shut off his service or has already shut off his service and requesting a Commission-issued payment arrangement. Under “requested relief,” Complainant wrote, “[I] want to reestablish my prior agreement made with the PUC and PGW law group. We agreed to [\$]900.00 down and [\$]350 monthly.”

On April 29, 2024,<sup>2</sup> PGW filed its Answer to the Formal Complaint which admitted in part and denied in part the various material allegations of the Complaint.

By Hearing Notice dated May 7, 2024, an Initial Call-In Telephonic Hearing was scheduled for July 2, 2024, and the matter was assigned to me.

A Prehearing Order was issued and served on May 9, 2024, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On July 2, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*, testified on his own behalf, and offered no exhibits for the record. However, I provided Mr. Wallace ten days to submit any late-filed exhibits to myself and PGW. Anita J. Murray, Esquire, appeared on behalf of PGW and presented the testimony of one witness, David Kauffman, a customer review officer with PGW. Mr. Kauffman sponsored the following five exhibits, which were admitted into the record without objection:

PGW Exhibit 1 – Account Statement

PGW Exhibit 2 – Utility Report

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dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

<sup>2</sup> The Formal Complaint was served on PGW on April 8, 2024.

PGW Exhibit 3 – Prior Payment Arrangements

PGW Exhibit 4 – November 2022 PUC Complaint/Decision

PGW Exhibit 5 – May 2024 PUC Complaint/Decision

Mr. Wallace did not submit any late exhibits.

The record consists of the 107-page transcript and PGW’s four exhibits. The record closed on October 24, 2024, when the transcript and exhibits were filed with the Commission.

### FINDINGS OF FACT

1. Complainant is Kevin Wallace, who has gas service at 1157 Atwood Road, Philadelphia, Pennsylvania 19151 (Service Address). Tr. 7, 38-40.
2. Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provides gas service to Complainant at the Service Address.
3. Complainant’s wife resides at the Service Address with her two children. Tr. 43-44.
4. Complainant resides elsewhere with his two adult children and another adult. Tr. 41, 43.
5. Complainant last resided at the service address in 2023. Tr. 46.
6. Complainant’s monthly income is \$6,250. Tr. 12-16.

7. The total monthly household income and household size of four places the household between 150% and 250% of the Federal Poverty Level. Tr. 97-98.

8. Complainant had one prior Commission-issued payment arrangement which was issued on August 10, 2021 at BCS No. 3798100 beginning in October 2021 (August 2021 PAR), which was subsequently broken by Complainant. PGW Ex. 4 at 6-10; Tr. 59-60.

9. The August 2021 PAR was issued via the COVID-19 emergency Order. Tr. 59, 98-99.

10. In granting the August 2021 PAR, Mr. Wallace's total household income was determined to be \$3,120 per month with a household size of three. PGW Ex. 4 at 6-10; Tr. 59.

11. Complainant entered into two company-issued payment arrangements.

12. Complainant's first company-issued payment arrangement was entered into on December 13, 2019, which was broken by Complainant. Tr. 54; PGW Ex. 3.

13. Complainant was offered a company-issued payment arrangement in August of 2022 that required a payment by September 2, 2022, to begin. Complainant did not make the first payment on time and the payment arrangement did not go into effect. Tr. 63-65, 73, 79; PGW Ex. 4 at 18-19.

14. Complainant subsequently entered into a new company-issued payment arrangement on October 12, 2022, which was broken by Complainant. Tr. 54-55, 80.

15. Complainant's outstanding balance at the time of the hearing was \$9,298.67. PGW Ex. 1; Tr. 50-51.

### DISCUSSION

Section 332(a) of the Public Utility 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 offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

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); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

### **Payment Arrangement**

Complainant requests a Commission-issued payment arrangement. Specifically, in the Complaint, Mr. Wallace requests that the Commission reinstate a prior payment arrangement issued by PGW. However, the Commission is not permitted to reinstate company-issued payment arrangements. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.<sup>3</sup> Chapter 14 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

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<sup>3</sup> It is noted that Chapter 14 sunsetted on December 31, 2024 and has not been reauthorized by the Pennsylvania Legislature. Nevertheless, since this action arose prior to the sunset of Chapter 14, its substantive effect still applies to this action. *Ghaderi v. St. Bd. of Osteopathic Med.*, 302 A.3d 240 (Pa. Cmwlth. 2023); *Miegoc v. W.C.A.B.*, 961 A.2d 418 (Pa. Cmwlth. 2008).

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.

66 Pa.C.S. §§ 1405(a)-(b).

Mr. Wallace testified that he has a gross monthly household income is \$6,250 and a household size of four.<sup>4</sup> Tr. 12-16, 37, 41, 43. Based on the household

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<sup>4</sup> I note that whether intentional or not, Mr. Wallace's testimony regarding his household size was confusing and misleading. For the majority of his testimony, he spoke as if he were residing at the service address. However, it became clear that there are two separate households at issue here, his and his wife's. Mr. Wallace's wife resides at the service address and he resides elsewhere. Mr. Wallace did not provide an updated address for himself. Mr. Wallace's wife resides at the service address with two children. Mr. Wallace resides elsewhere with another adult and his two adult children, but pays for the gas bill at the service address. Since the account is in Mr. Wallace's name, I am

income of \$6,250 per month, and his household size of four, Complainant falls between 150% and 250% of the Federal poverty level.<sup>5</sup> Tr. 97-98. Absent further restrictions, Mr. Wallace would qualify for a Level 2 payment arrangement. 66 Pa.C.S. § 1405(b)(4). However, as explained below, due to restrictions placed on the Commission by the Code, I cannot provide Complainant with a new Commission-issued payment arrangement.

### **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

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using only his household size in determining his eligibility for a Commission issued payment arrangement.

<sup>5</sup> See, Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2024); <https://aspe.hhs.gov/sites/default/files/documents/98087be2f7c9586ee24c35a011bc7ac8/guidelines-1983-2024.xlsx>.

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.

Complainant had one prior Commission-issued payment arrangement which was issued on August 10, 2021 at BCS No. 3798100 beginning in October 2021 (August 2021 PAR). PGW Ex. 4 at 6-10; Tr. 59-60. In granting the August 2021 PAR, Mr. Wallace's total household income was determined to be \$3,120 per month with a household size of three. PGW Ex. 4 at 6-10; Tr. 55, 59. Complainant defaulted on the August 2021 PAR. Tr. 60.

Currently, as explained above, Mr. Wallace's household income is \$6,250 per month, which is an increase of \$3,130 per month from the income determined in the August 2021 PAR. Complainant's income is between 200% and 250% of the Federal poverty level. Therefore, he would need to show at least a 20% decrease in his household income to meet the “Change in income” definition under the statute to qualify for a second Commission-issued payment arrangement. Because Mr. Wallace has had an increase in household income instead of a decrease of 20% or more, the Commission is not permitted to grant a second or subsequent payment arrangement under the Code. 66 Pa.C.S. §§ 1403, 1405(d).

### **Reinstatement of Prior Payment Arrangement**

Although Mr. Wallace is not eligible for a second Commission-issued payment arrangement, I must determine if he is eligible for reinstatement and extension of the August 2021 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) (emphasis added). 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.

Mr. Wallace’s testimony shows that there is an increase to the number of dependents in the household from a household size of three to four. PGW Ex. 4 at 6-10; Tr. 12, 37, 41, 55, 59. However, there is no evidence on the record that this increase resulted in Mr. Wallace’s default of the August 2021 PAR.

Mr. Wallace testified about being laid off in 2023 and being on short term disability in 2023. Tr. 19-20, 32. However, this was well after he defaulted on the August 2021 PAR and, therefore, could not have resulted in the default thereof. Mr. Wallace also mentioned his home needing repairs in 2023. Tr. 21-22, 33. Again, this

was after the default of the August 2021 PAR and thus, did not result in the default of the PAR.

Accordingly, the Complainant's request for a Commission-issued payment arrangement will be denied and the Complaint will be dismissed.

### 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 burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401–1419.
4. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa.C.S. § 1405(a).
5. 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).
6. 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. 66 Pa.C.S. § 1405(e).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Kevin Wallace in Kevin Wallace v. Philadelphia Gas Works at Docket No. F-2024-3048205 is dismissed.
2. That Docket No. F-2024-3048205 be marked closed.

Date: January 17, 2025

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/s/  
Michael J. Mroczka  
Special Agent