

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

Public Meeting held March 27, 2025

Commissioners Present:

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

Kevin Wallace

F-2024-3048205

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions¹ filed by Kevin Wallace (Complainant

¹ Although the Complainant filed Exceptions with the Commission's Secretary's Bureau on January 27, 2025, the Exceptions did not contain a certificate of service or any other indication that the parties of record to the case were served. Because the Complainant is not represented by an attorney, the Commission's Secretary's Bureau served a copy of the Exceptions on Philadelphia Gas Works (PGW or Respondent) on January 28, 2025. In order to avoid prejudice to either Party, pursuant to 52 Pa. Code § 5.535, PGW was given until February 18, 2025, to file Replies to Exceptions.

or Mr. Wallace) on January 27, 2025. The Exceptions were filed in response to the Initial Decision (I.D.) of Office of Administrative Law Judge (OALJ) Special Agent Michael J. Mroczka, which was issued by the Commission on January 17, 2025. PGW filed Reply Exceptions on February 18, 2025. For the reasons stated below, we shall deny the Complainant’s Exceptions and adopt the Special Agent Mroczka’s Initial Decision.

I. History of Proceeding

On April 3, 2024, the Complainant filed a Formal Complaint (Complaint)² against PGW with the Commission. In the Complaint, the Complainant indicated that PGW was threatening to shut off or has already shut off his residential gas service and requested that the Commission establish a new payment plan. Complaint at 2. In addition, Mr. Wallace indicated that he wants to reestablish a prior payment arrangement made with the Commission and the PGW “law group” in which it was agreed that there would be a \$900 initial payment and a \$350 monthly payment thereafter. *Id.* at 3.

On April 29, 2024, the Respondent filed an Answer wherein it admitted, in part, and denied, in part, various material allegations in the Complaint. In its Answer, PGW averred, *inter alia*, that it issued a termination notice for natural gas service at the service address. Answer at 1. PGW also averred that the Complainant established service at the service address in August 2019 and that the property is listed as “residential gas heat and other domestic appliances.” PGW further indicated that the

² The Complaint is a timely appeal from the Informal Decision of the Commission’s Bureau of Consumer Services (BCS), at BCS Case No. 3946911, which dismissed the Complainant’s informal complaint on February 26, 2024. *See* PGW Exh. 4 at 57-60. A timely BCS appeal is subject to *de novo* review conducted by either an ALJ or a special agent. 52. Pa. Code § 56.173(a).

property is equipped with an automatic meter reading device and the bills are based on actual meter readings. Answer at 1. PGW also admitted that the Complainant has had multiple PGW-issued payment agreements that remain unsatisfied, as well as one Commission-issued payment agreement that remains in default. *Id.* PGW requested that the Commission deny all relief requested by the Complainant and dismiss the Complaint. *Id.* at 2.

By Hearing Notice dated May 7, 2024 (Hearing Notice), an Initial Call-In Telephonic Hearing was scheduled for July 2, 2024, at 10:00 a.m., and the matter was assigned to Special Agent Mroczka. The Hearing Notice was electronically served on the Complainant. On May 9, 2024, Special Agent Mroczka issued a Prehearing Order for Telephone Hearing which was served on the parties of record on May 9, 2024.

On July 2, 2024 at 10:00 a.m., the telephonic hearing was held as scheduled. The Complainant appeared, *pro se*, and testified on his own behalf. The Complainant offered no exhibits for entry into the record and Mr. Wallace was provided ten days to submit any late-filed exhibits.³ I.D. at 2. PGW was present at the hearing and represented by counsel. The Respondent presented the testimony of one witness, Mr. David Kauffman, a customer review officer with PGW. The Respondent proposed four⁴ exhibits at the time of the hearing, which were admitted into the record without objection. I.D. at 2.

³ The Complainant did not submit any late-filed exhibits in this matter. I.D. at 3.

⁴ We note that in the Initial Decision, the Special Agent stated that PGW sponsored five exhibits. However, the record reflects that four exhibits were admitted into the record in this proceeding, without objection by the Complainant. I.D. at 2; Tr. 99; PGW Exhs.1-4.

The record in this proceeding consisted of the transcript and PGW's four exhibits. The hearing transcript was filed with the Secretary of the Commission and the record closed on October 24, 2024. I.D. at 3.

On January 17, 2025, the Commission issued the Initial Decision of Special Agent Mroczka, in which he found the Complainant failed to prove that he was entitled to a second or subsequent Commission-issued payment arrangement or reinstatement of the prior payment agreement. I.D. at 1, 12. The Special Agent determined that the Complainant failed to demonstrate a change in income or significant change in circumstances subsequent to the August 2021 Commission-issued payment arrangement and accordingly, the Complainant's request for a second or subsequent payment arrangement from the Commission was denied. I.D. at 12.

As noted, *supra*, the Complainant filed Exceptions on January 27, 2025. PGW filed Reply Exceptions on February 18, 2025.

II. Discussion

A. Legal Standards

Pursuant to Section 332(a) of the Public Utility Code (Code), the proponent of a rule or order, bears the burden of proof. 66 P.a. 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) (*Patterson*). 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*, 529 Pa. 654, 602 A.2d 863 (1992) (*Lansberry*). This standard requires the Complainant's evidence to be more convincing, by even the smallest amount, than

evidence presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950) (*Se-Ling Hosiery*). 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*, 489 Pa. 109, 413 A.2d 1037 (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*, 501 Pa. 433, 461 A.2d 1234 (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).

B. Positions of the Parties

The Complainant asserted that he wants to reestablish his prior payment agreement that he believes was made with the Commission and PGW. Complaint at 2. Mr. Wallace stated that the parties agreed to a \$900 down payment and a \$350 monthly payment. Complaint at 2-3; Tr. at 8. The Complainant submitted that he had been making payments on this specific agreement but had missed submitting a required payment on the proper due date, but paid one day later. Tr. at 8. Mr. Wallace also indicated that PGW refused to accept his payment on the specific arrangement and would not communicate with him on the matter. *Id.* at 8-9. The Complainant further indicated

that he was in bankruptcy at the time⁵ and attempted to negotiate another payment arrangement with PGW after his bankruptcy petition was dismissed. *Id.* at 10. In addition, the Complainant indicated that he had been making payments on his account to address the arrearages for the years 2020 to 2023. *Id.* at 26.

In addition, Mr. Wallace explained that he has not lived at the service address since 2023; however, his estranged wife and two children still occupy the premises. Tr. at 38, 43-44. At the time that the Complainant resided at the service address, four people lived at the home. *Id.* at 46-47. The Complainant further clarified that he is the responsible party for payment on the account related to the service address. *Id.* at 43.

At the telephonic hearing, the Complainant acknowledged that he had been granted several payment arrangements and claimed that he had attempted to satisfy the terms. The Complainant verified that his current monthly income is \$6,250. Tr. 12-16. The Complainant testified that he was employed at the date of the hearing but indicated that he had been laid off in August 2023, and also received short-term disability in March 2023. *Id.* at 19-20, 32. Mr. Wallace further testified that he may have been between jobs or unemployed for about four months in 2022. *Id.* at 23-24. The Complainant attempted to clarify the number of occupants at the service address where he no longer lives.⁶ *Id.*

⁵ Mr. Wallace testified that he filed his bankruptcy petition in February 2020. The Complainant indicated that his bankruptcy petition was dismissed in 2023 and, at the time of the dismissal, his PGW bill reflected an outstanding balance of \$8,000, which he testified was unaffordable. Tr. at 10-11.

⁶ Special Agent Mroczka found that, although the Complainant's testimony was confusing and misleading regarding the occupants at the service address, he would use Mr. Wallace's current household size of two adults and two adult children in determining his eligibility for a Commission-issued payment arrangement. I.D. at 7-8, n. 4.

PGW responded by requesting that the Commission dismiss the Complaint because its records reflect that the Complainant has had multiple PGW-issued payment agreements that remain unsatisfied, as well as one Commission-issued payment arrangement upon which the Complainant defaulted. Answer at 1; PGW Exhs. 3 and 4. At the telephonic hearing, PGW confirmed that the Complainant had entered into a Commission-issued payment arrangement in August 2021 and that the agreement was broken for nonpayment. Tr. at 55, 59; PGW Exh. 3.⁷ PGW's witness, Mr. Kauffman, also confirmed that Mr. Wallace had two PGW-issued payment arrangements, in December 2019 and October 2022, and that both went into default because two consecutive payments were missed by the Complainant. Tr. at 54-55; PGW Exh. 3. The Respondent testified that PGW's Exhibit 4 demonstrated that the Complainant received several termination notices to shut off service at the service address and that Mr. Wallace paid neither the charges incurred for the service provided nor the specific amounts agreed to under the various payment arrangements. Tr. at 59-71. PGW further testified that the Complainant made only seven payments on his account during the period of February 2020 to June 2024. *Id.* at 51; PGW Exhs. 3 and 4. PGW further asserted that the Complainant's outstanding account balance at the time of the hearing was \$9,298. I.D. at 5; Tr. at 50-51; PGW Exh.1.

In addition, the Respondent's witness testified that Mr. Wallace had filed for bankruptcy, and that action was reflected in Mr. Wallace's account for residential gas service. Tr. at 49-50; PGW Exh. 2. PGW stated that its records show that the Respondent properly established two accounts, one reflecting the filing of a bankruptcy petition by the Complainant and an account after the bankruptcy was dismissed in February 2023. Tr. at 53, 71-73; PGW Exhs. 2 and 4. PGW also presented evidence to demonstrate that the Complainant's account balance was large due to the accumulation of

⁷ The record in this proceeding reflects that the Complainant had a prior Commission-issued payment arrangement in August 2021 that depicted Mr. Wallace's income as \$3,120 per month with a household size of three. Tr. 59; PGW Exh. 4 at 7-10.

many months of charges for gas service with no payments, or only partial payments, made. Tr. 74; PGW Exhs. 1 and 4.

C. Initial Decision

The Special Agent made fifteen Findings of Fact (FOF) and reached seven Conclusions of Law (COL). I.D. at 3-5, 11-12. We shall adopt and incorporate herein by reference the Special Agent'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 issue of establishing a Commission-issued payment arrangement, the Special Agent first considered the Complainant's request to reinstate a prior payment arrangement issued by PGW. I.D. at 6; Complaint at 3. Special Agent Mroczka determined that the Commission is not permitted to reinstate company-issued payment arrangements in accordance with the provisions of Chapter 14 of the Code, 66 Pa.C.S. §§ 1401-1419.⁸ I.D. at 6 (citing 66 Pa. C.S. § 1405). The Special Agent examined the requirements of Section 1405 of the Code, which provides that the

⁸ We concur with Special Agent Mroczka that Chapter 14 sunsetted on December 31, 2024 and has not been reauthorized by the Pennsylvania General Assembly. The Special Agent determined that 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). We acknowledge that the Complaint and the Special Agent's Initial Decision were based, in part, upon Chapter 14 of the Code, 66 Pa.C.S. §§ 1401-1419 (Chapter 14), and specifically 66 Pa.C.S. §1405, which was in effect and governed the conduct at issue at the time of the conduct in question. Moreover, the Commission has clarified that its Regulations codified at 52 Pa. Code Chapter 56 shall remain in effect until amended. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered December 24, 2024). The Commission will apply this Statement of Policy in all proceedings related to issues in Chapter 14 until further direction is provided. *Id.* at 7.

Commission is authorized to establish arrangements between a public utility, customers, and applicants within the limits established by Chapter 14. In doing so, the Special Agent determined that an additional Commission-issued payment arrangement cannot be established in this case because it is prohibited by Section 1405(d) of Chapter 14.

I.D. at 8. 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.

Id. (citing 66 Pa.C.S. § 1405(d)).

The Special Agent further noted that a “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 using only his household size in determining his eligibility for a Commission issued payment arrangement.” Based upon the record, Special Agent Mroczka found that the Complainant had one prior Commission-issued payment arrangement, which was issued on August 10, 2021 at BCS Case No. 3798100 beginning in October 2021 (August 2021 PAR). I.D. at 9 (citing PGW Exh. 4 at 6-10; Tr. at 59-60). The Special Agent noted that Mr. Wallace’s total household income was determined to be \$3,120 per month with a household size of three at the time of the establishment of the August 2021 PAR. I.D. at 9 (citing PGW Exh. 4 at 6-10; Tr. at 55, 59). The record evidence demonstrated that the Complainant defaulted on the August 2021 PAR. I.D. at 9 (citing Tr. at 60).

The Special Agent also noted that Mr. Wallace’s current household income is \$6,250 per month, which is an *increase* of \$3,130 per month from the income

determined for the August 2021 PAR. I.D. at 9. The Special Agent concluded that the Complainant's income is between 200% and 250% of the Federal poverty level, and thus, Mr. Wallace had to demonstrate a 20% *decrease* in his household income to qualify for a second Commission-issued payment arrangement. *Id.* Because Mr. Wallace experienced an increase in household income, instead of a decrease of 20% or more, the Special Agent found that the Commission is not permitted to grant a second or subsequent payment arrangement under the Code. *Id.* (citing 66 Pa.C.S. §§ 1403, 1405(d)).

The Special Agent also examined whether the Complainant is eligible for reinstatement and extension of the Commission-issued August 2021 PAR in accordance with the provisions of Chapter 14. I.D. at 9. The Special Agent noted that Chapter 14 authorizes the Commission to reinstate and extend a Commission-issued payment arrangement on which a customer has defaulted because of a significant change in circumstance. I.D. at 9-10 (citing 66 Pa.C.S. § 1405(e)). The Special Agent noted that 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.

I.D. at 10 (citing 66 Pa.C.S. § 1403).

The Special Agent noted that Mr. Wallace's testimony showed that there was an increase to the number of dependents in the household, from a household size of three to four. I.D. at 4 (citing Tr. at 12, 37, 41, 55, 59; PGW Exh. 4 at 6-10). However, the Special Agent observed that there is no evidence on the record that this increase resulted in Mr. Wallace's default on the August 2021 PAR. I.D. at 10. Although Mr. Wallace testified about being laid off in 2023 and being on short term disability in 2023, the Special Agent found that the change in circumstances occurred after he defaulted on the August 2021 PAR and, therefore, could not have resulted in the default thereof. I.D. at 10. Accordingly, the Special Agent denied the Complainant's request for a Commission-issued payment arrangement and dismissed the Complaint. I.D. at 11.

D. Exceptions and Reply Exceptions

The Complainant's Exceptions⁹ consist of a document in which he enclosed the Commission's Secretarial Letter regarding the issuance of the Initial Decision, as well as a handwritten paragraph requesting reconsideration of a payment arrangement. Exc. at 1. In his Exceptions, the Complainant argues, *inter alia*: (1) that he was unemployed for seven months and was unable to pay his bill during that time; and (2) that he is currently working and requests the Commission to reconsider "your choice in not allowing me a payment arrangement." *Id.*

⁹ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which requires that each exception be numbered, identify the finding of fact and conclusions 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) and (d) of our Regulations, and consider the merits. *See, e.g., Destefano v. Peoples Natural Gas Company*, 56 Pa. P.U.C. 489 (1982); *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (Opinion and Order entered October 19, 1992); *William Schlinder v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (Opinion and Order entered March 26, 1993).

In its Replies to Exceptions, PGW counters that the Complainant contends, in his sole Exception, that Special Agent Mroczka failed to consider the Complainant's unemployment status when he denied the requested relief in the form of a payment agreement. R. Exc. at 2. The Respondent argues that the documentary evidence presented in this proceeding demonstrates that the Complainant had one Commission-issued payment agreement, previously issued on August 10, 2021, under BCS Case No.: 3798100, which commenced in October 2021, and which was later broken by Complainant. *Id.* at 2-3. PGW also submits that the Complainant testified that he was unemployed in August 2023 and that, upon consideration of the testimony, Special Agent Mroczka correctly determined that the Complainant's unemployment occurred *after* the default of the August 2021 PAR and, consequently, was not the cause of the default of the Commission-issued payment arrangement. *Id.* at 3. The Respondent urges the Commission to sustain the Initial Decision, arguing that the Complainant failed to meet his burden of proof and establish, by a preponderance of the evidence, his claim(s) against PGW. *Id.*

E. Disposition

At the outset, we note that any argument or Exception that we do not specifically address has been considered and will be denied without further discussion. 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).

Based upon the record in this proceeding and our review of the Parties' Exceptions and Replies, we agree with the Special Agent that the Complainant failed to meet his burden of proving that he was entitled to a second Commission-issued payment arrangement, as provided for in Chapter 14 of the Code, 66 Pa. C.S. §§ 1401 *et seq.* In

addition, we find that the Complainant did not sustain his burden of proof that PGW violated any provision of the Code, or any Commission rule, regulation or policy.

Upon review of the Complainant's Exceptions and the record in this proceeding, we concur with the Special Agent that the evidence clearly demonstrates that the Complainant was granted a Commission-issued payment arrangement in August 2021 on which he defaulted. I.D. at 4; Tr. at 55, 59; PGW Exh. 3. We also agree with Special Agent Mroczka that Chapter 14 limits the powers of the Commission to establish an additional Commission-issued payment arrangement in light of the record evidence that the Complainant defaulted on the previous arrangement. In addition, we concur with the Special Agent's determination that the Complainant is not eligible for an extension of the previously established Commission-issued payment arrangement because Mr. Wallace did not provide evidence that he had a change in income, and specifically a significant loss in income, or a significant change in circumstance, as defined by Chapter 14. I.D. at 8-10.

We have examined the record in this matter and find that the Complainant did not provide any evidence that he had experienced a decrease in income or significant change in circumstance during the period related to the August 2021 PAR. I.D. at 10. Although Mr. Wallace testified concerning certain adverse circumstances, such as a period of unemployment and a change in household occupants, we conclude that the record evidence demonstrates that the events occurred well after Mr. Wallace had defaulted on the Commission-issued payment arrangement. *See* Tr. at 12-24. In addition, the record in this proceeding shows that the Complainant neither made the required payments for charges incurred for the service provided, nor did he abide by the provisions for payment, as established by the various payment arrangements over a period of five years. Tr. at 59-71; PGW Exhs. 1 and 4. Thus, we agree with the Special Agent that Mr. Wallace is not eligible for a second Commission-issued payment

arrangement or an extension of the August 2021 PAR, in accordance with the provisions of Chapter 14.

As stated previously, pursuant to Section 332(a) of the Code, 66 Pa. C.S. § 332(a), the proponent of a rule or order, in this case the Complainant, bears the burden of proof, and must establish a sufficient case that PGW is responsible for the problem described in the Complaint. *See Patterson*. This showing must be by a preponderance of the evidence. *See Lansberry*. This standard requires the Complainant's evidence to be more convincing, by even the smallest amount, than evidence presented by PGW. *See Se-Ling Hosiery*. With only the Complainant's testimony, and no other evidence to consider, we must concur with the Special Agent's ruling that the evidence provided by PGW in this case demonstrates that the Complainant is not eligible for a second Commission-issued payment arrangement or an extension of the August 2021 payment agreement because he failed to prove that his change of income or circumstance of unemployment were related to the August 2021 PAR. Thus, we are not swayed by the Complainant's Exceptions on this issue and agree with the Special Agent that the Commission is not permitted to provide a subsequent payment arrangement to the Complainant, as prescribed by Chapter 14 of the Code.

In light of the above, we find that the Special Agent properly weighed the evidence and testimony presented to conclude that the Complainant failed to carry his burden of proof on the Complaint and, therefore, dismissal of the Complaint was appropriate. Accordingly, the Complainant's Exceptions are denied.

III. Conclusion

Based on our review of the record in this proceeding, we shall deny the Exceptions of Kevin Wallace, and adopt the Special Agent's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Kevin Wallace, filed on January 27, 2025 to the Initial Decision of Special Agent Michael J. Mroczka, issued on January 17, 2025, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Special Agent Michael J. Mroczka, issued on January 17, 2025, is adopted.
3. That the Formal Complaint, filed by Kevin Wallace, on April 3, 2024, against Philadelphia Gas Works, at Docket No. F-2024-3048205, is dismissed, consistent with this Opinion and Order.
4. That this proceeding be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 27, 2025

ORDER ENTERED: March 27, 2025