

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Susan McGuirk	:	
	:	
v.	:	C-2024-3049895
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

In this Initial Decision, the Complaint requesting a payment arrangement is denied, in part, with regard to Susan McGuirk’s arrearages accumulated during her participation in PGW’s customer assistance program, and granted, in part, with regard to the remainder of her outstanding balance.

HISTORY OF THE PROCEEDING

On July 3, 2024, Susan McGuirk (“Complainant” or “Ms. McGuirk”) filed a Formal Complaint (“Complaint”) against Philadelphia Gas Works (“PGW” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”). In her Complaint, Ms. McGuirk alleged that the utility is threatening to shut off her service or has already shut off her service, and that she is unable to pay her gas bills to PGW. As relief, Complainant requested that the Commission establish a payment arrangement for her.

On July 23, 2024, Respondent filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

An Initial Call-in Telephonic Hearing Notice dated August 8, 2024, notified the parties that an initial call-in telephone hearing was scheduled on October 9, 2024, at 10:00 a.m., and that the matter was assigned to me.

On September 19, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

On October 8, 2024, the Complainant requested a continuance of the scheduled hearing. PGW's counsel indicated that Respondent did not object to the request. By email dated October 8, 2024, the parties were instructed that Ms. McGuirk's request was granted, and that a new hearing date would be set for her Complaint.

A Hearing Cancellation/Reschedule Notice dated October 11, 2024, notified the parties that an initial call-in telephone hearing was rescheduled for December 6, 2024, at 10:00 a.m.

The hearing was convened as scheduled on December 6, 2024. Ms. McGuirk appeared *pro se* and testified in support of the Complaint. Anita Murray, Esq. represented the Respondent, Philadelphia Gas Works, and presented the testimony of Wendy Vacca, who is a Senior Customer Review Officer with PGW. The Respondent sponsored three exhibits. Ms. McGuirk indicated that she had not reviewed PGW's exhibits prior to the hearing and had no means of doing so during the hearing. Tr. 15-16. I provided her with an additional opportunity to review PGW's proposed exhibits and to inform me in writing by December 24, 2024, if she had any objections to their admission

into the record. I informed Ms. McGuirk that if I did not receive any written objections from her by the set deadline, I would assume that she had none and would admit PGW's exhibits into the record. As of the date of this Initial Decision, Ms. McGuirk has not submitted any written objections to PGW's exhibits. Consequently, PGW Exhibits 1-3 are admitted into the record in this case in accordance with the Ordering Paragraphs below.

The record in this matter closed on January 8, 2025, upon receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Susan McGuirk, who resides at 3043 Memphis Street, Philadelphia, PA ("Service Address"). Tr. 16.
2. The Respondent is Philadelphia Gas Works.
3. Ms. McGuirk resides at the Service Address with her husband, her adult son, and a minor child. Tr. 8.
4. Ms. McGuirk's sole income is \$1,722 per month in Social Security Disability benefits. Tr. 7.
5. During the period from July 2, 2022, to November 29, 2024, Ms. McGuirk made no payments towards her account with PGW. Tr. 17-18; PGW Exhibit 1.
6. As of the date of the hearing, Ms. McGuirk's outstanding balance with PGW is \$8,381.13. Tr. 17; PGW Exhibit 1.

7. Ms. McGuirk participated in PGW's Customer Responsibility Program ("CRP"). Tr. 18.

8. \$1,831 of the \$8,381.13 outstanding balance in Ms. McGuirk's account with PGW consists of CRP arrears. Tr. 18.

9. Ms. McGuirk has received and defaulted on two Company-issued payment arrangements. Tr. 18.

10. Ms. McGuirk has never received a Commission-issued payment arrangement. Tr. 19.

11. On or about May of 2023, Ms. McGuirk was diagnosed with atrial fibrillation which has rendered her unable to work and for which she will undergo surgery. Tr. 9.

DISCUSSION

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). In *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a

preponderance of the evidence. *Poorbaugh v. West Penn Power Co.*, 1994 Pa.P.U.C. LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 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 respondent. If the evidence presented by the respondent is of co-equal weight, the complainant has not satisfied her burden of proof. The complainant would be required to provide additional evidence to rebut the evidence of the respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 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. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

At the hearing, Ms. McGuoirk testified that she resides at the Service Address with her husband, her adult son and a minor child. Tr. 8. She explained that her gross household income consists of \$1,722 per month in Social Security disability benefits. Tr. 7. Around May of 2023, Ms. McGuoirk was diagnosed with atrial fibrillation, a heart condition which has rendered her unable to work and for which she was scheduled to undergo surgery after the hearing. Tr. 9.

In response to Ms. McGuirk's testimony, PGW's counsel presented the testimony of Wendy Vacca, who is a Senior Customer Review Officer with PGW. Ms. Vacca testified that Ms. McGuirk has a poor payment history having made no payments towards her account with PGW during the period from July 2, 2022, to November 29, 2024. Tr. 17-18; PGW Exhibit 1. As of the date of the hearing, Ms. McGuirk's outstanding balance with PGW is \$8,381.13. Tr. 17; PGW Exhibit 1. Ms. Vacca further explained that Ms. McGuirk participated in PGW's CRP and that, of her \$8,381.13 outstanding balance with PGW, \$1,831 consists of CRP arrears. Tr. 18. Lastly, Ms. Vacca added that Ms. McGuirk has received and defaulted on two Company-issued payment arrangements, but she has never received a Commission-issued payment arrangement. Tr. 19.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401–1419, applied to complaints alleging inability to pay and requesting a Commission-issued payment arrangement at the time of the hearing. This law provided strict guidelines that the Commission had to follow when determining whether a payment arrangement could be issued and the length of the payment arrangement. I note that Chapter 14 has subsequently sunset, effective December 31, 2024, according to its provisions, and is not currently in effect.¹

However, in its Statement of Policy entered December 24, 2024, the Commission 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 Dec. 24, 2024). With regard to the provision of payment arrangements, the Commission explained that it

¹ 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 269 (Pa. Cmwlth. 2008).

will maintain its application of the four-tiered process establishing the length of payment arrangements previously articulated in Chapter 14. *Id.* at 4. In particular, the Commission’s Statement of Policy states that the principles of Section 1405 and definitions of Section 1403 will continue after the expiration of Chapter 14 on December 31, 2024. *Id.* at 5. Thus, consistent with Chapter 14, utility customers will be eligible for one payment arrangement on arrearages accrued while not on a customer assistance program (“CAP”) under such terms, subject to a change in income or a significant change in circumstance as again outlined in the existing statute. *Id.* at 5, n.3 (citing 66 Pa.C.S. § 1405(c)).

Section 1405(e) of Chapter 14 provided that the Commission has no authority to establish a payment arrangement on amounts subject to customer assistance program (CAP) rates. Section 1403 of the Public Utility Code defined a CAP program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa.C.S. § 1403 (Definition of “Customer Assistance Program”).

PGW’s CRP meets the requirements of 66 Pa.C.S. § 1403, and therefore, the Commission lacks the authority to establish a payment arrangement on that portion of Ms. McGuoirk’s outstanding balance which consists of CRP arrears. The amount of \$1,831 must be paid timely.

The Complaint is denied as to the Complainant's request for a payment arrangement on the \$1,831 portion of her balance that is subject to CRP rates. *See Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered Sept. 12, 2013).

As for Ms. McGuirk's non-CRP balance, Chapter 14 provided that the length of time for a customer to resolve an unpaid balance 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.

Statement of Policy entered Dec. 24, 2024, at 4 (citing 66 Pa.C.S. § 1405(b)).

With a gross household income of \$1,722 per month for a household of four, Ms. McGuirk's household falls between 50% and 75% of the federal poverty level.² While Ms. McGuirk has had a poor payment history with PGW, her health condition diagnosed in May of 2023 has negatively impacted her ability to work. Consequently, Ms. McGuirk will be awarded a payment arrangement requiring her to make monthly payments consisting of her budget bill, plus one sixtieth (1/60th) of the

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>

balance accrued on her account that is not subject to customer assistance program rates, beginning with the first billing due date following the entry of a final Commission Order in this case.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).
4. The Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).
5. Following the sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code, the Commission's 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.

6. Following the expiration of Chapter 14 of the Pennsylvania Public Utility Code on December 31, 2024, the Commission will maintain its application of the four-tiered process establishing the length of payment arrangements previously articulated in Chapter 14. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328, at 4.

7. The principles of Section 1405 and definitions of Section 1403 of the Pennsylvania Public Utility Code will continue after the expiration of Chapter 14 on December 31, 2024. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328, at 5.

8. The Complainant has carried her burden of proving that she is entitled to a payment arrangement on the non-CRP portion of her outstanding balance.

9. The Complainant has failed to carry her burden of proving that she is entitled to a payment arrangement on the CRP portion of her outstanding balance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW Exhibits 1-3 are admitted into the record in this matter.
2. That the Formal Complaint of Susan McGuoirk in *Susan McGuoirk v. Philadelphia Gas Works* at Docket No. C-2024-3049895 is granted, in part, and denied, in part.

