

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terri Al Hadi	:	
	:	
v.	:	F-2014-2437933
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision dismisses a formal Complaint filed by Terri Al Hadi (Complainant) alleging that she had not received her bills and requesting a payment arrangement from the Philadelphia Gas Works (PGW or Respondent). The formal Complaint is a timely appeal of a determination by the Commission’s Bureau of Consumer Services (BCS) at BCS Case No. 3214755.

HISTORY OF THE PROCEEDING

On August 14, 2014, Complainant filed a timely appeal of a determination by the BCS at BCS Decision No. 3214755. The BCS had denied Complainant’s request for a payment arrangement (PAR) and found that Complainant did receive her bills from PGW. Complainant re-stated that she had not received her bills and requested a PAR.

On September 8, 2014, PGW filed an Answer to the formal Complaint, denying the allegations therein, and specifically stating that Complainant has broken four previous PARs.

Also on September 8, 2014, PGW filed a Motion for Summary Judgment in this case. On September 22, 2014, Complainant filed an Answer to the Motion in the form of a letter asserting that she had made good faith efforts to make her payments and renewing her request for a new PAR.

By notice dated October 27, 2015, the Commission scheduled this matter for an initial telephonic hearing on December 10, 2015, at 10:00 a.m. I issued a Prehearing Order dated December 4, 2015.

On December 10, 2015, I convened a telephonic hearing originating from the office of the Commission in Harrisburg, Pennsylvania. Complainant appeared and offered testimony. PGW was represented by Graciela Christlieb, Esquire who presented the testimony of Patricia Bernard, a Customer Review Expert with PGW, and four exhibits that were received into evidence: PGW 1, a record of account contacts for Complainant's account; PGW 2, a Statement of Account; PGW 3, a history of PARs; and, PGW 4, a copy of the BCS determination at BCS Case No. 3214755.

On December 15, 2015, the record in this case closed. The record consists of a thirty four page hearing transcript and exhibits PGW 1-4. This matter is ready for decision.

FINDINGS OF FACT

1. The Complainant in this case is Terri Al Hadi who resides at 7437 Walnut Lane, Philadelphia, Pennsylvania.
2. The Respondent in this case is the Philadelphia Gas Works.
3. Complainant established natural gas service from PGW at 7437 Walnut Lane, Philadelphia, Pennsylvania, on May 2, 2005. Tr. at 16.

4. Complainant had a PAR from the BCS on January 17, 2013, which Complainant subsequently broke. Tr. at 16.

5. Complainant had a formal Complaint at Docket No. F-2013-2392121 which was closed on December 4, 2013, with the filing of a Certificate of Satisfaction, and Complainant was given a PAR by PGW which Complainant subsequently broke. Tr. 16-17.

6. Complainant never indicated to PGW that she was not receiving bills. Tr. 14, 17-18, 28.

7. Complainant has not had a change in gross income. Tr. at 25.

8. From December, 2011 to December, 2015, Complainant made 14 payments, none of which brought the balance of her account to zero. Tr. at 20.

9. As of November 17, 2015, Complainant owed a balance of \$10.153.26 on her account. PGW Exhibit 2.

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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

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 a complainant. *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528 (1980), and *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*).

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 & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1961); and *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

In this case, the fact that the Complainant owes an arrearage is not in dispute. Complainant claims that one reason for the arrearage is that she has not been receiving bills at the service address. She presented no evidence to support this claim but merely asserted that she had not received the bills. That contention is not proof that an event did not occur. In the multiple contacts that Complainant has had with PGW, Complainant never raised this issue. PGW asserts that it has been sending the bills to the service address, and that none have been returned. In reply to a direct question by counsel for PGW, PGW witness Bernard unequivocally stated that a shut-off notice that Complainant testified she received was sent to the same address to which Complainant's bills had been sent; thus, it would make no sense that Complainant would receive a shut-off notice, but no bills. Tr. 14-15. The Complainant has not met her burden of proof with respect to this issue.

Complainant has also requested a PAR on the basis that she did not receive her bills. Complainant has broken three previous PARs, one ordered by the Commission, and two provided by PGW. PGW Exhibit 3. Section 1405(d) of the Public Utility Code, 66 Pa.C.S. § 1405(d), states:

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.

By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); see also, *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Public Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982). PGW has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303. *Neal v. Philadelphia Gas Works*, Docket No. Z-00971874, (Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Co.*, Docket No. Z-8712758, (Order entered April 8, 1988).

Section 1405(d) of the Public Utility Code limits the number of payment agreements that the Commission can establish or order a public utility to establish to just one, absent a change in income. 66 Pa. C.S. § 1405(d). The record in this case demonstrates that PGW itself has provided Complainant with two payment agreements and the Commission's BCS with one. Further, the record demonstrates a lack of good faith effort on the part of Complainant to pay her utility bills, and she presented no evidence that she experienced a significant change in circumstances which were outside of her control. See *George Crawford v. National Fuel Gas Distribution Corporation*, Docket No. C-20066348 (Final Order entered December 6, 2007). Complainant testified that now and at the time arrearages were incurred, she was living with her three children at the service address. Tr. 25. Complainant testified that while she had changed jobs, her gross income was "probably the same," and she presented no evidence to the contrary. Tr. at 26-27.

Based on the evidence presented, the Complainant has failed to prove by a preponderance of the evidence that PGW has acted improperly or unlawfully. Therefore, the Complaint in this case must be dismissed.

CONCLUSIONS OF LAW

1. 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).

2. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

3. 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 a complainant. *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 528 (1980), and *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

4. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

5. "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 & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of*

Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 85 Pa. Cmwlt. Ct. 23, 480 A.2d 382 (1984).

6. By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Co.*, 55 Pa. PUC 637 (1982); see also, *Kea v. Peoples Natural Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Public Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwlt. 1982).

7. The Commission can only establish, or order a public utility to establish, one payment agreement, absent a change in income. 66 Pa. C.S. § 1405(d); *George Crawford v. National Fuel Gas Distribution Corporation*, Docket No. C-20066348 (Final Order entered December 6, 2007).

8. The Commission will not issue a payment arrangement to a complainant when the record demonstrates a lack of good faith effort on the part of the customer to pay the utility bills and there was no evidence that the customer experienced a significant change in circumstances which were outside the customer's control. *George Crawford v. National Fuel Gas Distribution Corporation*, Docket No. C-20066348 (Final Order entered December 6, 2007).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Terry Al Hadi against PGW Gas Works at Docket No. F-2014-2437933 is dismissed.

2. That the record at Docket Number F-2014-2437933 be marked closed.

Dated: December 20, 2016

/s/
Dennis J. Buckley
Administrative Law Judge