

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mazie Ashmore	:	
	:	
v.	:	C-2015-2493008
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

This decision grants in part and denies in part a formal complaint filed by a customer of a natural gas distribution company seeking a payment arrangement for her outstanding amount owed and arguing that there are incorrect charges on her bill. The customer demonstrated that she is entitled to a payment arrangement of five years to pay the amount owed because she has experienced a change in income since receiving her last Commission-ordered payment arrangement. The customer, however, failed to demonstrate that there are incorrect charges on her bill. Therefore, the customer's request for a payment arrangement for her outstanding amount owed will be granted but the portion of her complaint averring incorrect charges on her bill will be denied.

HISTORY OF THE PROCEEDING

On July 14, 2015, Mazie Ashmore filed a formal complaint with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW or the company), docket number C-2015-2493008. In her complaint, Ms. Ashmore indicated that PGW is threatening to

shut off her service or has already shut off her service and that there are incorrect charges on her bill. Ms. Ashmore noted that her husband is ill and hot water and gas for cooking is a medical necessity. Ms. Ashmore further stated, among other things, that she would like the complaint resolved by her not having to pay the charges she believes are incorrect and also having her meter checked for accuracy. Ms. Ashmore attached various documents to her complaint in support of her position.

The formal complaint was served on PGW electronically by the Commission's Secretary.¹

On August 5, 2015, PGW filed an answer to Ms. Ashmore's complaint admitting or denying the various averments made in her complaint. In particular, PGW stated that it issued a shut off notice for Ms. Ashmore's account for service at the service address and denied that there are incorrect charges on the bill. PGW provided additional information regarding Ms. Ashmore's account, noting in particular that an automatic meter reading (AMR) device was installed and actual meter readings have been obtained monthly. PGW also discussed the outstanding balance on Ms. Ashmore's account and requested that the Commission find against Ms. Ashmore and dismiss the complaint.

On August 14, 2015, the Commission issued a Telephonic Hearing Notice establishing an Initial Telephonic Hearing for this case for Friday, September 25, 2015 and assigning me as the Presiding Officer. A Prehearing Order dated August 25, 2015 was issued setting forth various procedural rules that would govern the hearing.

On September 15, 2015, PGW filed a motion for continuance noting that PGW will be closed on September 25, 2015 due to the visitation of the Pope to the City of Philadelphia. In support of its motion, PGW argued that the company informed its employees on September 14, 2015 that PGW employees should not report to work on September 25, 2015,

¹ PGW has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on July 16, 2015.

except for assigned essential personnel. PGW's motion was unopposed and granted via Order dated September 17, 2015. The Commission issued a Hearing Cancellation/Reschedule Notice rescheduling the Initial Telephonic Hearing for Wednesday, November 18, 2015.

The Initial Telephonic Hearing convened on November 18, 2015, as scheduled. Ms. Ashmore appeared *pro se*. Laureto Farinas, Esquire appeared on behalf of PGW. Prior to the hearing, a discussion was held off the record wherein the parties expressed an interest in engaging in settlement discussions because Ms. Ashmore could not participate in a full hearing as she was dealing with a medical situation at that time. The parties agreed that the Presiding Officer would participate in those discussions pursuant to the Commission's regulations at 52 Pa.Code §§ 5.223(c) and 5.231(c). During those discussions, however, Ms. Ashmore received a phone call from her doctor and had to terminate settlement discussions. In light of the parties' willingness to engage in settlement discussions, the parties agreed that the hearing would be continued and the case would be referred to the Commission's Mediation Unit for mediation review. The parties agreed that, to the extent that mediation was not successful, the hearing would be rescheduled. As such, an order granting a second motion for continuance and referring the matter to the Mediation Unit for mediation review was issued on December 18, 2015.

Mediation was unsuccessful. Therefore, on October 19, 2016, a Telephonic Hearing Notice was issued on October 19, 2016 establishing a Further Telephonic Hearing for Tuesday, November 22, 2016. Prehearing Order #2 was issued on October 20, 2016 again setting forth various rules that would govern the hearing.

The hearing convened on November 22, 2016, as scheduled. Ms. Ashmore appeared *pro se* and presented oral testimony. Laureto Farinas, Esquire appeared on behalf of the company and presented the testimony of one witness who sponsored four exhibits that were admitted in to the record. A transcript of 48 pages was created. The record in this proceeding closed on December 29, 2016 when the transcript was submitted to the Commission.

Ms. Ashmore's complaint is ready for disposition. For the reasons discussed below, Ms. Ashmore's request for a payment arrangement for her outstanding amount owed will

be granted but the portion of her complaint averring that there are incorrect charges on her bill will be denied.

FINDINGS OF FACT

1. The Complainant in this case is Mazie Ashmore.
2. The Respondent in this case is Philadelphia Gas Works.
3. The service address is 6622 Germantown Avenue, Apt. 2A, Philadelphia, PA.
4. Ms. Ashmore lived in a two bedroom apartment with her husband until he passed away in February, 2016. Tr. 7, 22
5. The service address is on the second floor above a commercial property. Tr. 8.
6. Ms. Ashmore currently lives alone at the service address and receives \$1,000 each month from social security. Tr. 20.
7. Jessica Glace is a senior customer review officer for PGW and has worked for PGW for ten years. Tr. 25.
8. PGW Exhibit Number 1 is the Contacts for Account for Ms. Ashmore's account. Tr. 25; PGW Exh. No. 1.
9. PGW Exhibit Number 2 is the Specific Service Agreement Statement of Account for Ms. Ashmore's account. Tr. 25-26; PGW Exh. No. 2.

10. PGW Exhibit Number 3 includes information regarding the payment agreements Ms. Ashmore has received to pay her outstanding balance. Tr. 26; PGW Exh. No. 3.

11. PGW Exhibit Number 4 is a decision of the Commission's Bureau of Consumer Services regarding an informal complaint Ms. Ashmore filed on July 24, 2014. Tr. 26; PGW Exh. No. 4.

12. The outstanding balance on Ms. Ashmore's account is \$4,557.94. Tr. 27.

13. PGW offered for Ms. Ashmore to either 1) re-enter a payment arrangement by making a \$3,015.03 catch up payment and then paying a budget amount of \$82 a month plus \$41 toward the arrears or 2) to apply for PGW's customer responsibility program (CRP) and pay \$105 a month based on her income of \$1,000 per month, plus have 1/36th of the balance forgiven each month if the \$105 is paid in full each month. Tr. 28-29.

14. Ms. Ashmore received three medical certificates on her account covering the periods from: 1) September 23, 2013 to October 22, 2013; 2) November 3, 2014 to December 2, 2014; and 3) April 10, 2015 to May 9, 2015. Tr. 30-31; PGW Exh. No. 1.

15. The meter on Ms. Ashmore's account only registers usage in her apartment and not for the business below her. Tr. 31-32.

16. The Statement of Account provides details regarding the transaction dates and types, the meter reading, the number of days in the billing cycle, the amount on the bill and the current balance, among other things. Tr. 33; PGW Exh. No. 2.

17. In 2016, there were five payments made on Ms. Ashmore's account, one of which was a grant payment; in 2015, there were nine payments made on the account, two of which were grant payments; in 2014, there were ten payments made on the account, one of which was a

grant payment; and in 2013, there were three payments made on the account, two of which were grant payments. Tr. 33; PGW Exh. No. 2.

18. Ms. Ashmore was enrolled in CRP on November 8, 2011 and removed from CRP on July 23, 2014. Tr. 33-34; PGW Exh. Nos. 1 and 2.

19. Ms. Ashmore was removed from CRP once it was found that the monthly amount paid on CRP was less than what her assessment was. Tr. 33-34; PGW Exh. No. 2.

20. When Ms. Ashmore was removed from CRP, the amount frozen was included back in the total balance and Ms. Ashmore was again billed for actual usage beginning on July 23, 2014. Tr. 34; PGW Exh. No. 2.

21. Ms. Ashmore's bill was based on actual usage not estimated readings. Tr. 35.

22. The Commission's BCS gave Ms. Ashmore a payment agreement on December 3, 2014 of \$155 per month with a catch-up payment of \$1,370.49 based on household income of \$1,487 and two people living at the home. Tr. 36; PGW Exh. No. 3.

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. PUC 196 (1990). "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). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Ms. Ashmore requests a payment

arrangement that is more affordable for her to pay her outstanding amount owed to PGW. Ms. Ashmore also seeks to ensure that her bills are correct. Ms. Ashmore, therefore, has the burden of proof in this proceeding.

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. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth 1982).

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, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

In this case, Ms. Ashmore argued that she would like a better payment arrangement than the one she was previously provided to pay off her outstanding balance owed to PGW. Ms. Ashmore testified, among other things, that her husband passed away in February, 2016. Tr. 7. Ms. Ashmore further testified that her income has decreased since her husband passed away. Ms. Ashmore also testified that she is being incorrectly charged because PGW has the wrong address for her on her account. Tr. 8.

In response to Ms. Ashmore's testimony, PGW presented the testimony of Jessica Glace, a senior customer review officer, who testified regarding the details of Ms. Ashmore's account. In particular, Ms. Glace testified that the outstanding balance on Ms. Ashmore's

account is \$4,557.94. Tr. 27. Ms. Glace further testified that PGW offered for Ms. Ashmore to either re-enter a payment arrangement by making a \$3,015.03 catch up payment and then paying a budget amount of \$82 a month plus \$41 toward the arrears or to apply for PGW's customer responsibility program (CRP) and pay \$105 a month based on her income of \$1,000 per month, plus have 1/36th of the balance forgiven each month if the \$105 is paid in full each month. Tr. 28-29. Ms. Glace also discussed the payment history on the account. In response to Ms. Ashmore's arguments that there were incorrect charges on her bill, Ms. Glace testified that the meter number, not the address, correctly corresponds to Ms. Ashmore's account. Tr. 32.

Substantial record evidence demonstrates that Ms. Ashmore has satisfied her burden to demonstrate that she is entitled to a second Commission-ordered payment arrangement because she has experienced a change in income. However, Ms. Ashmore has failed to satisfy her burden to demonstrate that there are incorrect charges on her bill. Ms. Ashmore's complaint will, therefore, be granted in part and denied in part.

With regard to Ms. Ashmore's argument that there are incorrect charges on her bill, this argument will be rejected. The only evidence that Ms. Ashmore provided in support of her position that there are incorrect charges on her bill is her testimony that she lives above a commercial property and there are other apartments in the building. Tr. 8. Ms. Ashmore questioned whether she may be getting charged for usage from the other units. Ms. Ashmore testified that there may be some confusion in the company's records regarding which usage should be charged to which meter at the property because the company has her address incorrectly noted. Tr. 8-9.

In response, Ms. Glace testified that she verified that the meter number at the service address matches the meter number on the account. Tr. 32. Ms. Glace testified that, even though Ms. Ashmore's mailing address may be 6622 Germantown Avenue, "PGW has the meter positioned in a certain way" so that gas is only being measured for Ms. Ashmore's apartment. Tr. 31-32. Ms. Glace also confirmed that the company does not have an account for the address Ms. Ashmore thought she was being charged for – 6620 Germantown Avenue – in its system.

Tr. 32. In addition, Ms. Glace offered during the hearing to have a company technician visit the property to confirm that she is being billed correctly and Ms. Ashmore accepted that offer. Tr. 32.

As noted above, if PGW rebuts Ms. Ashmore's evidence, the burden of going forward with the evidence shifts back to Ms. Ashmore, who must rebut PGW's evidence by a preponderance of the evidence. *Milkie, supra*. It is not sufficient evidence to satisfy her burden for Ms. Ashmore to surmise that she may be incorrectly charged by PGW for usage accrued in other units in her building because her address may be incorrectly noted in the company's billing system. PGW has demonstrated that there is no such error and that Ms. Ashmore has at all times been correctly billed. PGW also offered to send a technician to the service address to confirm that Ms. Ashmore is being correctly billed which appeared to satisfy Ms. Ashmore's concern. Ms. Ashmore did not present any additional evidence in the form of actual bills or usage comparisons, for example, to demonstrate that there are any incorrect charges on her bill. Yet, PGW has demonstrated that Ms. Ashmore's bills are correct. Ms. Ashmore has failed to rebut PGW's evidence in this case. As a result, Ms. Ashmore's argument that she was incorrectly billed will be rejected.

With regard to Ms. Ashmore's request for a payment arrangement, disposition of this complaint is governed by Chapter 14 of the Public Utility Code. Chapter 14 grants the Commission the authority to establish a payment arrangement for customers with outstanding bills pursuant to certain guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b). For example, the Commission may establish a payment arrangement for a customer whose gross monthly household income does not exceed 150% of the federal poverty level a payment arrangement over a period of up to five years. 66 Pa.C.S. § 1405(b)(1). Furthermore, the Commission's ability to establish a payment arrangement is limited to requiring a utility to provide only one payment arrangement to a customer, absent a change in income or a significant change in circumstance. 66 Pa.C.S. § 1405(d). Chapter 14 defines a "change in income" as a decrease in household income of 20% or more if the customer's household income level exceeds 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 than the federal poverty level. 66 Pa.C.S. § 1403.

In this case, record evidence demonstrates that Ms. Ashmore is the only person living at the service address and that the gross household monthly income is \$1,000. Tr. 20. For homes with one person, 100% of the federal poverty level is \$990. 81 Fed. Reg. 4036 (Jan. 25, 2016). Therefore, Ms. Ashmore is at 101% of the federal poverty level ($1,000 / 990 = 101$). Record evidence further demonstrates that the Commission established a payment arrangement for Ms. Ashmore based on monthly income of \$1,487 on December 3, 2014. Tr. 36; PGW Exh. No. 3. As a result, the Commission may establish a second payment arrangement for Ms. Ashmore because she has experienced a sufficient change in income because the household income is less than 200% of the federal poverty level and the household income decreased by more than 10% since the last payment arrangement was provided ($((1,487 - 1,000) / 1487 = 32)$).

As a result, PGW will be directed to give Ms. Ashmore a payment arrangement that enables her to pay her outstanding amount owed to PGW over 60 months because the household income is less than 150% of the federal poverty level. 66 Pa.C.S. § 1405(b)(1). It is noted, however, that Ms. Ashmore may instead want to consider enrolling in PGW's CRP. Under those circumstances, as Ms. Glace testified, Ms. Ashmore would be required to pay \$105 a month based on her income and have $1/36^{\text{th}}$ of her arrearage forgiven each month if she makes timely payments. Tr. 28-29. Enrolling Ms. Ashmore in PGW's CRP will not be directed as part of this decision but is, nonetheless, a consideration for Ms. Ashmore.

In conclusion, Ms. Ashmore has satisfied her burden to demonstrate that she is entitled to a payment arrangement to pay her outstanding balance owed to PGW because she has realized a change in income. Ms. Ashmore will be given five years to pay her outstanding balance because her household income is below 150% of the federal poverty level. Ms. Ashmore, however, has failed to satisfy her burden to demonstrate that there are incorrect charges on her bill. Ms. Ashmore's complaint will, therefore, be granted in part and denied in part.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. 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).

3. 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. PUC 196 (1990).

4. "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).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. 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. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

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

8. "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.Superior 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwltth 23, 480 A.2d 382 (1984).

9. The Commission may establish a payment arrangement for customers with outstanding bills pursuant to certain guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b).

10. The Commission may order a company to allow a customer whose gross monthly household income does not exceed 150% of the federal poverty level a payment arrangement over a period of up to five years. 66 Pa.C.S. § 1405(b)(1).

11. The Commission's ability to order a utility to provide a payment arrangement is limited to requiring a utility to provide only one payment arrangement to a customer, absent a change in income or a significant change in circumstance. 66 Pa.C.S. § 1405(d).

12. A "change in income" is a decrease in household income of 20% or more if the customer's household income level exceeds 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 than the federal poverty level. 66 Pa.C.S. § 1403.

13. For homes with one person, 100% of the federal poverty level is \$990. 81 Fed. Reg. 4036 (Jan. 25, 2016).

14. Ms. Ashmore has satisfied her burden to demonstrate that she should be given five years to pay the outstanding balance accrued on her account with PGW because she has experienced a change in income since she was given her last payment arrangement. 66 Pa.C.S. § 1405(d).

15. Ms. Ashmore has failed to satisfy her burden to demonstrate that there are incorrect charges on her bill.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Mazie Ashmore on July 14, 2015 against Philadelphia Gas Works, docket number C-2015-2493008, is hereby granted in part and denied in part.

2. That the portion of Ms. Ashmore's complaint requesting a payment arrangement to pay her outstanding amount owed to Philadelphia Gas Works is granted.

3. That the portion of Ms. Ashmore's complaint averring that there are in correct charges on her bill is denied.

4. That within 30 days of the date the Commission enters its Order in this case, Philadelphia Gas Works shall tender a bill to Mazie Ashmore for the unpaid balance of her gas bill along with the monthly amount accrued representing billing for services rendered on a going forward basis.

5. That Mazie Ashmore shall pay Philadelphia Gas Works the regular monthly bill amounts accrued as they come due, plus 1/60th of the arrearage owed on her account identified in ordering paragraph number 4, commencing with the first monthly bill received after entry of the Commission's Order in this case and continuing thereafter on the due date for the payment of each regular monthly bill, until the arrearage on her account has been paid in full.

6. That, as long as Mazie Ashmore complies with the terms of this Order, Philadelphia Gas Works shall not suspend or terminate her utility service except for valid safety or emergency reasons.

7. That, if Mazie Ashmore fails to comply with the terms of this Order, Philadelphia Gas Works is authorized to suspend or terminate her utility service in compliance with all applicable tariff and regulatory requirements, and to take other action permitted by law.

8. That this matter be marked closed.

Date: January 17, 2017

/s/
Joel H. Cheskis
Administrative Law Judge