

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles Brown	:	
	:	
v.	:	C-2016-2571654
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

This Initial Decision denies Charles Brown’s formal Complaint against Philadelphia Gas Works at Docket No. C-2016-2571654 for failure to carry the burden of proof.

HISTORY OF THE PROCEEDING

On October 14, 2016, Charles Brown (Mr. Brown or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (Respondent, PGW or the Company) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off his gas service and that there are incorrect charges on his bill from PGW. In particular, Mr. Brown is challenging the transfer of an outstanding balance from his old address at 1025 W. Dakota Street to his present account, as well as the usage recorded at his present address. As relief, the Complainant requested that his account with PGW be reviewed and corrected accordingly.

On November 7, 2016, the Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated November 30, 2016, informed the parties that the initial hearing in this matter was scheduled for Thursday, January 19, 2017, at 10:0 a.m.

A Prehearing Order was issued on January 6, 2017, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The initial hearing convened as scheduled. Charles Brown appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Joyshalyn Moore, who is a Customer Review Officer with PGW in charge of reviewing and investigating formal complaints filed with the Commission. The Respondent sponsored five exhibits (PGW Exhibit 2-6), all of which were admitted into the record in this case.

The record closed on February 18, 2017.

FINDINGS OF FACT

1. The Complainant is Charles Bartell, who resides at 2427 North Clarion Street, Philadelphia, PA 19132 (Service Address). Tr. 7.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Brown resides at the Service Address by himself.
4. Mr. Brown's gross monthly income consists of \$1,308.00 per month in the form of Social Security Disability benefits. Tr. 10.
5. Mr. Brown resided at 1025 W. Dakota Street prior to moving to the Service Address in March of 2014. Tr. 8.

6. Mr. Brown's first gas bill from PGW for the Service Address was issued on April 16, 2014, covered a 12-day period and was in the amount of \$92.88. PGW Exhibit 2, Tr. 19.

7. No outstanding balance was transferred to Mr. Brown's present account from the 1025 W. Dakota Street account. Id.

8. On January 9, 2016, Mr. Brown enrolled in PGW's Customer Responsibility Program (CRP) with a reported gross monthly household income of \$1,308.00. PGW Exhibits 2 and 3, Tr. 19-21.

9. At the time of Mr. Brown's enrollment in CRP, his outstanding balance of \$2,508.27 was set aside or "frozen." Tr. 19-20, PGW Exhibit 3.

10. Following his enrollment in CRP, Mr. Brown's monthly bill consisted of 10% of his gross household income, or \$130.80 plus \$5.00 towards his pre-program arrearage. Tr. 20, PGW Exhibit 3.

11. As of the day of the hearing, Mr. Brown was still enrolled in PGW's CRP program. Tr. 30.

12. If Mr. Brown were to be removed from PGW's CRP program, his regular budget billing would amount to \$141.00 per month based on his gas usage on the past 12 months. Tr. 22.

13. On November 23, 2016, Mr. Brown received a \$250.00 Low Income Home Energy Assistance Program (LIHEAP) grant which was applied towards his balance with PGW. Tr. 27, 29.

14. Mr. Brown's outstanding balance with PGW is \$3,011, of which \$611.23 consists of CRP arrearages. Tr. 46, PGW Exhibit 2.

DISCUSSION

In the present formal Complaint, Mr. Brown alleged that the utility is threatening to shut off his electric service and that he is unable to pay his electricity bills to PGW. As relief, the Complainant requested that the Commission establish an affordable payment arrangement for him.

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.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 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.A. § 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 Company*, 1994 Pa. PUC 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) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). 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 and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (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*, 501 Pa. 433, 461 A.2d 1234 (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).

A) Transfer of prior balance to Mr. Brown's account for the Service Address

At the evidentiary hearing, Mr. Brown testified that he resided at 1025 W. Dakota Street prior to moving to the Service Address in March of 2014. Tr. 8. Mr. Brown testified that, although he was supposed to have gas heat at the 1025 W. Dakota Street address, he heated his apartment with electric space heaters for the last two years of his stay there because his landlord had removed the gas line at the property. Tr. 12-13. He testified that during this time, March 2012 to March 2014, he was receiving bills from PGW but they were not high. Tr. 13. According to Mr. Brown, that balance was transferred to his new account for the Service Address. Tr. 35-36. He stated that the transferred balance is listed in his bills from PGW, but submitted not such bills into the record and did not elaborate as to why he believed that the transfer was improper.

Respondent's witness, Ms. Moore, testified that no outstanding balance was transferred to Mr. Brown's present account from the 1025 W. Dakota Street account. She explained that Mr. Brown's first gas bill from PGW for the Service Address, which was issued on April 16, 2014, covered a 12-day period and was in the amount of \$92.88. In support of PGW's position, Ms. Moore sponsored PGW Exhibit 2, Ms. Moore's Statement of Account for the Service Address, which confirms her statement that no outstanding balance was transferred to Mr. Brown's present account.

No matter how honest and strong Mr. Brown's assertions are, they cannot form a basis for a finding in his favor. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). Nor does the testimony consisting of guesses, conjecture or speculation - supposition without a premise of fact - which is ordinarily rejected as inadmissible and as proving nothing. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Department of Highways*, 398 Pa. 518, 159 A.2d 206 (1960). In view of the above, I find that Mr. Brown has failed to carry his burden of proving that the Respondent improperly transferred a balance to his present account for gas service at the Service Address.

B) Inability to pay for gas service

At the hearing, Mr. Brown clarified his Complaint by stating that he is not disputing his gas usage and billing at the Service Address as abnormally high. Tr. 41. However, he claimed he cannot afford to pay his monthly bills under the CRP terms. *Id.* He also explained that he was not interested in receiving a payment arrangement. Tr. 46-49. Mr. Brown testified he resides at the Service Address by himself and that his entire gross monthly income consists of \$1,308.00 per month in the form of Social Security Disability benefits. He stated that he can only afford to pay approximately \$50.00 per month towards his gas bill with PGW. Tr. 8-9.

Ms. Moore testified that, On January 9, 2016, Mr. Brown enrolled in PGW's CRP program with a reported gross household income of \$1,308.00 for a household of one individual. At the time of Mr. Brown's enrollment in CRP, his outstanding balance of \$2,508.27 was set aside or "frozen." Following his enrollment in CRP, Mr. Brown's monthly bill consisted of 10% of his gross household income, or \$130.80, plus \$5.00 towards the arrearage. As of the day of the hearing, Mr. Brown was still enrolled in PGW's CRP program.

Ms. Moore explained that the terms of the CRP program are more beneficial for Mr. Brown than his regular budget billing amount or even a Commission-issued payment arrangement. If Mr. Brown were to be removed from PGW's CRP program, his regular budget billing would amount to \$141.00 per month based on his gas usage on the past 12 months.

Section 1403 of the Public Utility Code defines a Customer Assistance Programs, like PGW's CRP 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").

Ms. Moore testified that the discount received by a customer enrolled in PGW's CRP program is based upon the household income and size in relation to the federal poverty guidelines. Tr. 20. PGW's CRP term are stated in PGW's Tariff, which states in pertinent part:

13.1.C. Applicable Rates. A Participant's CRP Payments will be based upon the Participant's family size and gross household income. A Participant will pay a percentage of his/her gross household income depending on where that Participant falls within the Federal Poverty Guidelines (FPL). Rates are calculated under rate schedule GS, including riders.

13.1.C.1. For payment purposes CRP Participants will be defined as follows:

13.1.C.1.a. Group A: Participants whose gross household income has been verified as being from 0 – and up to and including 50% of FPL.

13.1.C.1.b. Group B: Participants whose gross household income has been verified as being greater than 50% and up to and including – 100% of FPL.

13.1.C.1.c. Group C: Participants whose gross household income has been verified as being greater than 100% – and up to and including 150% of FPL.

13.1.C.2. A CRP Participant will be responsible for paying the following rates for service or \$25 per month, whichever is greater.

13.1.C.2.a. Group A: 8% of gross income.

13.1.C.2.b. Group B: 9% of gross income.

13.1.C.2.c. Group C: 10% of gross income

PGW Gas Service Tariff – Pa P.U.C. No. 2, Supplement No. 42, Second Revised Page No. 59 and Supplement No. 69, Third Revised Page No. 60.

PGW's CRP program meets the requirements of 66 Pa.C.S. § 1403.¹ At \$1,308.00 per month for a household of one, Mr. Brown's income falls between 100% and 150% of the federal poverty level. PGW has correctly enrolled Mr. Brown in PGW's CRP program under Group C. I agree with Ms. Moore that the terms of the CRP program are more beneficial for Mr. Brown than his regular budget billing amount.

After carefully reviewing the record in this matter, I conclude that the Complainant has failed to carry his burden of proving that PGW improperly or incorrectly billed him for gas service at the Service Address. In whatever way the Complainant configures his household budget, he will have to pay PGW for the service he consumes. By law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982). Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Order entered April 8, 1988). No public utility may receive a greater or lesser rate than the one set forth in its tariff on file with this Commission. 66 Pa.C.S. § 1303.

In view of the above, Mr. Brown's Complaint against PGW is denied in its entirety.

¹ Tariffs filed with state regulatory agencies such as the Public Utility Commission are not mere contracts but have the force of law and are binding on the consumer and the utility. *Stiteler v. Bell Telephone Company*, 379 A.2d 339 (Pa.Cmwlth. 1977); *Brockway Glass Company v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa.Cmwlth. 1981); *Pennsylvania Electric Company v. Pennsylvania Public Utility Commission*, 663 A.2d 281 (Pa.Cmwlth. 1995).

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 complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

3. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

4. A Customer Assistance Program is a plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, 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.

5. PGW's CRP program meets the requirements of 66 Pa.C.S. § 1403.

6. A public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Charles Brown against Philadelphia Gas Works at Docket No. C-2016-2571654 is dismissed in its entirety.
2. That the Secretary mark this docket closed.

Dated: June 5, 2017

/s/

Eranda Vero
Administrative Law Judge