

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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|------------------------|---|----------------|
| Sharon Jamison | : | |
| | : | |
| v. | : | F-2017-2600503 |
| | : | |
| Philadelphia Gas Works | : | |

INITIAL DECISION

Before
Rebecca Waldemar
Special Agent

INTRODUCTION

The Complainant filed a formal Complaint alleging that the utility was threatening to terminate her service and that her bills were high and requesting an affordable payment arrangement. This decision grants the request and sets a payment arrangement requiring the balance to be repaid over a period of 60 months.

HISTORY OF THE PROCEEDING

On April 19, 2017, Sharon Jamison (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW or Respondent) alleging that her bills were high, that PGW was threatening to terminate her service, and requesting a payment arrangement.¹ Ms. Jamison further stated that although she lives in a one bedroom apartment, her gas bill goes as high as two and three hundred dollars a month. On

¹ The formal Complaint is an appeal of a Bureau of Consumer Services decision at BCS No. 3502917 which set a payment arrangement on behalf of the customer.

May 16, 2017, PGW filed an Answer to the Complaint. In its Answer, PGW admitted that it had issued a termination notice to the Complainant.

A Telephone Hearing Notice dated May 23, 2017, advised the parties that an initial telephonic hearing was scheduled for Wednesday June 21, 2017, at 10:00 a.m. The case was assigned to me, pursuant to 52 Pa. Code § 56.174. A Prehearing Order dated June 1, 2017 advised the parties of the date and time of the scheduled hearing and informed them of the procedures applicable to this proceeding. In accordance with the provisions of the Prehearing Order, the Respondent submitted proposed exhibits.

The initial telephonic hearing convened as scheduled.² Ms. Jamison appeared *pro se* and testified on her own behalf. Graciela Christlieb, Esq., counsel for Respondent, presented the testimony of one witness, Jennifer Pearson, a customer review officer for PGW, who sponsored three exhibits which were admitted into the record. Toward the end of the hearing, there was discussion regarding the submittal of a late filed exhibit. I held the record open but was informed by PGW that it did not wish to file a further exhibit. The record closed on July 31, 2017.

FINDINGS OF FACT

1. The Complainant is Sharon Jamison, who receives natural gas utility service from the Respondent at 828 Wynnwood Rd., 3rd Floor, Philadelphia, Pennsylvania.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant's household consists of herself and her adult daughter.
4. The Complainant earns between \$1400 and \$1600 a month after taxes depending on whether or not she works overtime. This is the total household income.
5. Complainant's daughter attends college and does not work.

² A tape recording of the hearing was made, no court reporter being present.

6. Ms. Jamison's apartment is not weatherized. She has tried to talk to her landlord about the cost to heat the apartment but he dismisses her concerns.

7. As of the date of the hearing, the Complainant's past due account balance was \$5161.27.

8. The Complainant has broken one payment arrangement given by the Respondent.

9. Ms. Jamison made three payments from October 14, 2014 to June 6, 2017.

10. Although Ms. Jamison requested that her meter be tested, PGW did not test the meter because Complainant did not pay a \$10 fee to have it tested.

DISCUSSION

At the hearing, Ms. Jamison asserted that she believed she was being overcharged for her gas service and requested a payment arrangement.

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving that she is entitled to the requested relief. 66 Pa. C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm.*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Public Utility Comm.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Public Utility Comm.*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S.A. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a

fact sought to be established. *Norfolk and Western Ry. v. Pa. Public Utility Comm.*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. 1984).

Where, as here, a Complainant alleges a high bill, the Complainant's burden of proof regarding the high bill claim is governed by *Waldron v. Philadelphia Electric Co.*, 54 Pa. P. U. C. 98 (1980). In *Waldron*, the Commission concluded that a complainant may establish a *prima facie* case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If the Complainant has submitted such evidence, the burden of going forward with evidence shifts to the Respondent. If the Respondent fails to rebut the Complainant's evidence, then the Complainant prevails. If the Respondent provides evidence to rebut the Complainant's *prima facie* case, the burden of going forward with the evidence shifts back to the Complainant.

Also, in *Milkie v. Pa. Pub. Util. Com.*, 768 A. 2d 1217 (Pa. Cmwlt. 2001), the Commonwealth Court expanded the Commission's ruling in *Waldron*. The Commonwealth Court found that the Commission's requirement that the Complainant must establish certain specific elements to make out a *prima facie* case was too restrictive. It held that even where the utility has presented evidence that it has tested the customer's meter and found it to be accurate; the customer may prove her or his case by circumstantial evidence that the metered usage exceeded actual usage. In making its determination, the Commission may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. *Bennett v Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v PECO Energy Co.*, Docket No. C-2010-2187197 (Order entered November 15, 2011).

At the hearing, Ms. Jamison testified she believed she was being overcharged for her gas service because she lives in a one bedroom apartment and her bill is over \$300 a month and she has a daughter who pays less for service than she does. She further testified that she did not know if her bill was high because of PGW or because her landlord will not weatherize the

apartment. She stated that when she tries to talk to her landlord about her high gas bill, he dismisses her concerns. PGW's witness testified that the Complainant's meter has not been tested by PGW because the Complainant did not pay the \$10 testing fee.

Ms. Jamison's complaint that she is being overcharged will be dismissed. In order to prove she is being overcharged for her gas service, Ms. Jamison would need to present evidence to show that her household composition has changed, her energy use potential is low, or some other circumstantial evidence. *Waldron v. Philadelphia Electric Co.* The only evidence Ms. Jamison presented was her belief that her bills should be lower. She then stated that she didn't know if her bills were high because of PGW or her landlord. On cross examination, she testified that she lives on the third floor of a three story house made into three apartments, that her landlord does not weatherize, and that she has seven or eight windows in her one bedroom apartment. This testimony does not provide a *prima facie* case that PGW is overcharging the Complainant for service.

Turning to the Complainant's request for a payment arrangement; the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401, *et seq* (Chapter 14) applies to complaints alleging inability to pay and requests for Commission-issued payment agreements. This law authorizes the Commission to establish payment arrangements between a public utility and its customers within prescribed limits that the Commission must follow. 66 Pa.C.S. § 1405(a).

The maximum length of time to resolve an unpaid balance that the Commission is authorized to allow depends upon the Complainant's gross monthly household income as follows: (1) Five years for customers with an income not exceeding 150% of the federal poverty level; (2) three years for customers with an income exceeding 150% of the federal poverty level but not by more than 250%; (3) one year for customers with an income exceeding 250% of the federal poverty level but not by more than 300%; and (4) six months for customers with an income exceeding 300% of the federal poverty level. 66 Pa.C.S. § 1405(b).

The record does not reflect that the Complainant has defaulted on any payment arrangement established by the Commission. While the Respondent's witness testified that the Complainant had broken a Commission issued payment arrangement, she was testifying about

the payment arrangement set by the Commission's Bureau of Consumer Services which was timely appealed and the subject of the instant Complainant. I find that Ms. Jamison is a level one customer consistent with Chapter 14 and will set a payment arrangement accordingly. Ms. Jamison testified that her household consists of herself and her daughter who attends college. Her monthly gross household income fluctuates between \$1400 and \$1600 per month. For a household of two, the monthly household income, at either figure, falls below 150% of the federal poverty level which makes her a level one income customer under Chapter 14. Consequently, she may be given a payment arrangement allowing 60 months to reconcile her past due balance. 66 Pa.C.S. § 1405(b)(1).

While no testimony was presented regarding Ms. Jamison's participation in PGW's customer assistance program, it appears she may qualify. PGW is encouraged to assist Ms. Jamison in applying for the customer assistance program if she is eligible.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S.A. § 701.
2. The Complainant had the burden of proof. 66 Pa. C.S.A. § 332(a).
3. The Complainant did not make out a *prima facie* case that she was being over charged. *Waldron v. Philadelphia Electric Co.*, 54 Pa. P. U. C. 98 (1980).
4. The Responsible Utility Customer Protection Act, 66 Pa. C.S.A. §§ 1401, *et seq.*, applies to this proceeding.
5. The Commission is authorized to establish a payment arrangement between a public utility and a customer. 66 Pa. C.S. § 1405(a).
6. The Complainant has met her burden of proving that the Commission may grant her a payment arrangement allowing her 60 months to pay her past due balance.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Sharon Jamison against Philadelphia Gas Works at Docket No. F-2017-2600503 is sustained in part and dismissed in part.

2. That Sharon Jamison's complaint of being over charged is dismissed.

3. That Sharon Jamison's request for a payment arrangement is granted.

4. That Sharon Jamison shall make monthly payments consisting of her current charges plus one 1/60th of the balance accrued on her account, beginning with the first billing due date following the entry of a final Commission Order in this case.

5. That as long as Sharon Jamison keeps the payment schedule stated in this Order, Philadelphia Gas Works shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.

6. That if Sharon Jamison does not keep the payment schedule stated in this Order, Philadelphia Gas Works is authorized to suspend or terminate her utility service in accordance with the Commission's statute and regulations.

7. That the Secretary mark this docket closed.

Date: August 22, 2017

/s/
Rebecca Waldemar
Special Agent