

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tyra Payne	:	
	:	
v.	:	C-2017-2591107
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision finds that the Complainant was not overbilled and that she is not eligible for a second payment arrangement at this time. She is also not entitled to payment arrangement reinstatement or extension. However, this decision also requires Philadelphia Gas Works and the Complainant to meet to address discrepancies in Ms. Payne's account record that may affect the Complainant's eligibility for various PGW programs.

HISTORY OF THE PROCEEDING

On February 28, 2017, Tyra Payne (Complainant or Ms. Payne) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW). In the Complaint, Ms. Payne is seeking a payment arrangement with a lower monthly payment than required by the payment arrangement issued by the Bureau of Consumer Services (BCS). She also contends that she is billed for more gas than she uses. The Complaint is an untimely appeal of Bureau of Consumer Services Decision (BCS), Case Number 3449462.

On March 21, 2017, Respondent filed an Answer denying the material allegations of the Complaint. PGW also stated in the Answer that the Complainant was in the Customer Responsibility Program or CRP, a low income-low rate program, that her income increased and she no longer qualified for CRP. Respondent further stated that Complainant was placed on a PGW payment agreement requiring a \$891.72 down payment by June 20, 2016 and payments of \$323 (\$267 budget plus \$56 toward arrears) per month for 24 months. PGW further avers that Complainant did not make the \$891.72 down payment and the agreement lapsed. PGW also stated that on November 10, 2016, BCS issued Complainant a payment arrangement requiring a payment of \$355 per month (\$289 budget plus \$66 towards arrears).

A Hearing Notice dated March 24, 2017 advised the parties that an initial hearing was scheduled for Tuesday, May 4, 2017, at 10:00 a.m.

A Prehearing Order was issued on April 11, 2017, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On the morning of May 4, 2017, Ms. Payne faxed a letter to the Commission, asking that the hearing be rescheduled due to work issues. That request was granted and on May 12, 2017, the matter was rescheduled for hearing on June 22, 2017 at 10:00 a.m.

The initial hearing convened as scheduled. Ms. Payne appeared *pro se* and testified in support of the Complaint. Laureto Farinas, Esq. represented the Respondent, and presented the testimony of Tiffany Jones, Senior Customer Review Officer at PGW. The Respondent sponsored three exhibits which were admitted into the record.

The record in this matter closed on July 20, 2017.

FINDINGS OF FACT

1. The Complainant is Tyra Payne, who resides at 1105 East Stafford Street, Philadelphia, PA 19138 (Service Address). (PGW 1).
2. The Respondent is Philadelphia Gas Works.
3. On November 9, 2016, BCS issued to Complainant a Level 2 payment arrangement on a balance of \$2,354.48. (PGW 2).
4. The payment arrangement required that, beginning in December of 2016, Ms. Payne make a monthly payment of \$355, which included \$289.00 budget billing plus \$66.00 towards her arrearage. (PGW 2).
5. Complainant did not make monthly payments of \$355 as required by the BCS payment arrangement. (Tr. 7-9; PGW 1).
6. Ms. Payne lives alone and her gross monthly income is \$1,808.¹ (Tr. 13).
7. The number of people in Complainant's household and monthly income have not changed since she was awarded the payment arrangement by BCS in November of 2016. (Tr. 10).
8. Complainant's highest usage is from the late fall to early spring. (PGW 1).
9. As the temperature gets colder, Complainant's gas usage increases. (PGW 1).

¹ Complainant earns \$11.30 per hour, working 40 hours per week. She testified that her take home pay is approximately \$936 per month. (Tr. 9, 12-13).

10. Complainant was enrolled in the PGW Customer Responsibility Program (CRP) from March of 2015 until April of 2016 when she was no longer eligible due to an increase in income. (Tr. 3-36; PGW 1).

11. While enrolled in the CRP, a customer pays lower bills based on his or her income. (Tr. 34).

12. When the Complainant was no longer in the CRP, her monthly bills increased. (PGW 1, Tr. 34-35).

DISCUSSION

Any offense alleged by the Complainant must be a violation of the Public Utility Code (Code), the Commission's regulations, or an outstanding order of the Commission.

66 Pa.C.S. § 701. 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 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.Cmwlt. 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 his 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).

HIGH BILL

The Complainant contends that her bill is too high and she is charged for more gas than she uses.

As previously noted, a complainant has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Where 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. PUC 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. Comm'n*, 768 A. 2d 1217 (Pa. Cmwlth. 2001) (*Milkie*), 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 his or her 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).

A utility company has technical information about and access to a meter that a complainant will not. Following the *Milkie* analysis, a complaint is not routinely dismissed because a customer has no direct proof that the meter malfunctioned or direct proof of other error with respect to the measurement of gas usage and billing. See *Milkie, Burtleson v. Pa. Pub. Util. Comm'n*, 461 A. 2d 1234 (Pa. 1983). With the *Milkie* analysis, the burden of proof remains with the complainant, however. *Replogle v. Pennsylvania Electric Co.*, 54 Pa. PUC 528 (1980).

Ms. Payne contends that she does not use all of the gas for which she is charged by PGW. She presented no evidence in support of that contention.

Additionally, PGW records do not suggest that Ms. Payne is overbilled or otherwise billed incorrectly. The PGW record of Ms. Payne's account shows the CCFs (a volumetric measurement of gas) used and the degree days (DDD), a means of measuring how hot or cold was a given day. The higher the degree day, the more gas heat that is used. The following chart shows the Complainant's high usage months for the period late fall of 2014 to early spring of 2016.

Year		2014	2015	2016	2017
	Month				
	November	Ccfs 223 DDD's 327	Ccfs 279 DDD's 293	Ccfs 259 DDD's 317	
	December	Ccfs 445 DDD's 707	Ccfs 398 DDD's 443	Ccfs 262 DDD's 652	
	January		Ccfs 572 DDD's 1011	Ccfs 423 DDD's 832	Ccfs 137 DDD's 946
	February		Ccfs 535 DDD's 1049	Ccfs 366 DDD's 893	Ccfs 170 DDD's 691
	March		Ccfs 435 DDD's 915	Ccfs 261 DDD's 470	Ccfs 373 DDD's 654

PGW 1.

The billing and usage appear consistent, with CCFs, or usage, increasing as DDDs, or degree days, increase, i.e., the amount of energy used to heat the Complainant's home increased on colder days. Noteworthy is that in some months where the degree days were high, such as January and February of 2017, PGW usage records reflect a lower than expected measurement of usage by the Complainant.

The Complainant did experience a bill increase in 2016 but it was not due to overcharging or over billing. It was because Complainant was found no longer eligible for the CRP and the reduced charges available to CRP participants.

In March of 2015, Complainant was placed in PGW's CRP. Her balance of \$3,174.47, was frozen, i.e., removed from her outstanding balance, and would be forgiven in increments each month over the time that she paid her CRP bills. (Tr. 35; PGW 1). Once placed in CRP, the Complainant's monthly bill was about \$38 per month. (PGW 1).

When Ms. Payne visited the PGW offices in April of 2016 to recertify for CRP, she was told that she earned over the limit to qualify and would not be recertified. (Tr. 49). Tiffany Jones, PGW Senior Customer Review Officer, testified that the CRP income limit for a one-person household is \$1,508.

Once no longer in the CRP, the Complainant's bills significantly increased. As examples, her bills in October and November of 2015 were \$38.82 each month under CRP rates. After she was removed from the CRP, her October 2016 bill was \$164.02 and her November 2016 bill was \$385.28. (PGW 1). The BCS payment arrangement awarded in November of 2016 required payments of \$355 per month, which included budget billing amount of \$289 plus \$66 toward her arrears of \$2,353.48. This also is significantly above her \$38 per month CRP rate. As PGW Senior Customer Review Officer Jones testified, CRP "masked" the Complainant's usage during high usage months. (Tr. 34). The Complainant has not met her burden of showing that PGW billed her incorrectly.

However, testimony and evidence presented suggest that PGW should revisit Ms. Payne's records and account. First, PGW records show the Complainant's monthly income as \$2,000 per month. Ms. Payne credibly testified that this is in error. Further, a PGW document dated May 2016, the month that PGW determined that she was ineligible for CRP, states that the Complainant's monthly income is \$485.33 rather than an amount that would make her ineligible. (Tr. 50). Second, Ms. Payne testified that in determining her monthly income, PGW included December holiday pay, which is not normally part of her income. (Tr. 50). PGW did not dispute this testimony. Third, PGW testimony was that Ms. Payne was given a payment arrangement and that it was broken. (Tr. 37). However, there was also testimony that when a customer is removed from CRP after an increase in income just over the CRP limit, the customer is generally offered a

no money down payment arrangement and that such an arrangement was not offered to Ms. Payne. (Tr. 48).²

Although the records and testimony of PGW were inconsistent, no action by PGW was a violation of the Code, Commission Order or regulations. PGW should meet with Ms. Payne to clarify these issues.

PAYMENT ARRANGEMENT

The Complainant has made good faith efforts, with her limited income, to pay her PGW bill, making payments approximately every two weeks. (Tr. 7-8; PGW 1). Unfortunately, the provisions of the Code prohibit awarding her relief at this time. Based on the evidence presented, she is not eligible for a Commission-issued payment arrangement.

The Responsible Utility Customer Protection Act (Chapter 14) authorizes the Commission to establish payment arrangements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a). Chapter 14 also provides rules regarding whether a customer who defaults on a payment arrangement is eligible for another payment arrangement.

Where a customer defaults on a Commission-issued payment arrangement, Chapter 14 provides:

(d) *Number of payment arrangements.* -- 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.

66 Pa.C.S. § 1405(d). Change in income is defined as follows:

² PGW suggested that Ms. Payne was not offered a payment arrangement because she did not seek to recertify. (Tr. 48). Ms. Payne's detailed, undisputed testimony is that she sought recertification when she visited the PGW office at Broad and Erie Streets in Philadelphia. (Tr. 49-50).

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 of the Federal poverty level.

66 Pa.C.S. § 1403. Therefore, when a customer defaults on a payment arrangement, under § 1405(d), a customer is eligible for another payment arrangement only when there is a decrease in income as defined by § 1403.

On November 9, 2016, the Commission's BCS awarded Complainant a Level 2 payment arrangement. Although the Complainant states that the required payment of \$355 per month is and was too high for her to pay, she did not file a timely appeal of the BCS decision and did not file the instant complaint until February of 2017, when she was about three months in default. (Complaint). There is no dispute that she did not timely pay the Commission-issued payment arrangement as required and therefore defaulted. (PGW 3; Tr.7-9).

Complainant testified that her household income and the number of persons in her household have not changed since the Commission's BCS awarded her the payment arrangement. (Tr. 10). She has not experienced the decrease in income required by Sections 1405(d) and 1403 to receive a second Commission-issued payment arrangement.

Chapter 14 also provides that where a customer defaults, a payment arrangement may be extended or reinstated under certain conditions. It states:

(e) Extension of Payment Arrangements. If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

§ 1405(e). A "Significant change in circumstance" is defined in 66 Pa.C.S. § 1403 as follows:

"Significant change in circumstance." Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

(1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income; (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household; (3) Loss of the customer's residence; and (4) Increase in the customer's number of dependents in the household.

Complainant presented no evidence of a significant change in circumstances as defined in Section 1403 and therefore is not eligible for an extension or reinstatement under § 1405(e).

Accordingly, the Complainant's request for a payment arrangement will be denied.

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 had the burden of proof. 66 Pa.C.S. § 332(a).

3. Where a complainant alleges a high bill, 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. *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980).

4. The Complainant did not present any circumstantial evidence in support of her claim of a high bill. *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).

5. The Commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established in Chapter 14 of the Pennsylvania Public Utility Code. 66 Pa.C.S. § 1405.

6. The Complaint defaulted on a previous Commission-issued payment arrangement and is not eligible for a second payment arrangement under 66 Pa.C.S. § 1405(d).

7. The Complainant did not experience a significant change in circumstances required for reinstatement or extension of the payment arrangement, 66 Pa.C.S. § 1405(e); § 1403.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Tyra Payne against Philadelphia Gas Works at Docket No. C-2017-2591107 is denied.

2. That Philadelphia Gas Works and Tyra Payne will meet within 30 days to address discrepancies in the account record of Tyra Payne consistent with this decision.

3. That the Secretary mark this docket closed.

Date: October 11, 2017

/s/
Darlene Davis Heep
Administrative Law Judge