

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Korto Washington	:	
	:	
v.	:	C-2017-2598552
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision finds that the Philadelphia Gas works has correctly billed the Complainant.

HISTORY OF THE PROCEEDING

On April 6, 2017, Korto Washington (Complainant or Ms. Washington) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW). In the Complaint, Ms. Washington contends that there are incorrect charges on her bill and questions why her bill was \$286 in November of 2016 and \$5,107.21 in February of 2017. In support of her Complaint, she attached a PGW bill dated February 4, 2017 showing current charges of \$215.71 and a total amount due of \$5,107.21.

On May 2, 2017, Respondent filed an Answer denying the material allegations of the Complaint. PGW also stated that the Complainant has had gas service at multiple addresses and that accumulated bills and partial payments have produced a balance of \$5,107.21.

A Hearing Notice dated May 8, 2017 advised the parties that an initial hearing was scheduled for Thursday, June 29, 2017, at 10:00 a.m.

A Prehearing Order was issued on May 24, 2017, reminding 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. Ms. Washington appeared *pro se* and testified in support of the Complaint. She presented Kabeh Hutchins as a witness and the following exhibits. They are:

- C 1 - Copy of Philadelphia Police Department Complaint or Incident Report
- C 2 - Copy of Police Department Incident list for 6339 Algon Avenue, Philadelphia, PA
- C 3 - Pennsylvania Treasury Department form
- C 4 - PGW notice of outstanding balance of \$2,679.724 dated January 22, 2014 for Ms. Washington at 9460 Fairgreen Lane, Philadelphia, PA,

Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Tiffany Jones, Senior Customer Review Officer at PGW. The Respondent also sponsored three exhibits. They are:

- PGW 1 - Korto Washington PGW Service Agreements
- PGW 2 - Korto Washington PGW Statements of Account
- PGW 3 - PGW record of payment arrangements with Korto Washington

All exhibits were admitted into the record. The record in this matter closed on July 20, 2017 upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Korto Washington, who resides at 2801 Angus Road, Philadelphia, PA 19138, where she receives gas service from PGW. (Tr. 4).
2. The Respondent is Philadelphia Gas Works.
3. Ms. Washington previously resided at 9460 Fairgreen Lane in Philadelphia, Pennsylvania, where she received PGW service and was the PGW customer of record from January 4, 2013 through July 17, 2014. (Tr. 28, PGW 1).
4. Ms. Washington resided at 9464 Fairgreen Lane and was a PGW customer of record from July 17, 2014 through November 4, 2014. (Tr. 29; PGW 1).
5. Ms. Washington resided at 9445 Fairgreen Lane and was a PGW customer of record from November 1, 2014 through July 5, 2016. (PGW 1, Tr. 30).
6. Ms. Washington transferred PGW service to her current address, 2801 Angus Road, Philadelphia, Pennsylvania, on July 1, 2016. (Tr. 31, PGW 1).
7. Prior to 2013, Ms. Washington was a PGW customer on Algon Road. (Tr. 32).
8. Prior to 2013, Complainant's daughter was customer of record at her mother's residence on Algon Road and on Fairgreen Lane. (Tr. 19).
9. The charges at issue do not include any charges for service on Algon Road. (Tr. 32; PGW 1, PGW 2).
10. The PGW Customer Responsibility Program (CRP) is a program for low income customers to receive gas service at a low rate.

11. When placed in the CRP, the customer's outstanding balance is "frozen," i.e., removed from the current outstanding balance, and placed into a CRP loan repayment plan. (Tr. 35).

12. On August 1, 2014, the Complainant was placed in the CRP and her outstanding balance of \$3,923.87 was "frozen." (Tr. 35).

13. When placed in CRP, the Complainant was to pay, and was billed, \$146.27 per month. (PGW 2).

14. Complainant did not pay \$146.27 regularly and on time. (PGW 2).

15. The Complainant accumulated over \$1,400.00 in additional unpaid balance by June of 2016. (PGW 2, p. 3).

16. On June 3, 2016, the balance of the CRP loan, \$3,640.25, was unfrozen and added to the unpaid amount due. (PGW 2, p. 4).

17. At the time of the hearing, Complainant's unpaid balance with PGW was \$5,920.88. (Tr. 40; PGW 2, p. 7).

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.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).

Generally, 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. If the Complainant has submitted such evidence, the burden of going forward with evidence shifts to the Respondent. *Waldron*.

The Commonwealth Court expanded on the Commission's *Waldron* ruling in *Milkie v. Pa. Pub. Util. Comm'n*, 768 A. 2d 1217 (Pa. Cmwlth. 2001) (*Milkie*). The Commonwealth Court held that the customer may prove his or her case by circumstantial evidence and that 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).

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).

Ms. Washington contends that any large bill was due to usage at her previous address on Algon Road for which she is not responsible. (PGW 1). She testified that due to illness, she did not live at the Algon Road address when the charges were incurred and that there were intruders living there. (Tr. 5-7). In support of this claim, Ms. Washington testified that she sought the help of the Philadelphia Police Department to remove the intruders and introduced into evidence a Philadelphia Police Department Incident Report and an Algon Street police incident listing. (C 1, C 2; Tr. 6). Ms. Washington also presented a Treasury Department form pertaining to an investigation of the intruders' illegal use of checks sent to the Algon address. (C 3).

Ms. Washington also contends that some of the charges were incurred by her daughter, Kabeh Hutchins, as customer of record at the Algon residence and one of the residences on Fairgreen. Complainant called Ms. Hutchins as a witness, who testified that she lived at the Algon address from 2007 to 2012 and on Fairgreen Lane until 2013. (Tr.19).

The intruders were present on Algon and Ms. Hutchins was the customer of record prior to 2014. The statute of limitations precludes Ms. Washington from receiving relief from charges incurred more than three years before she filed the instant Complaint, i.e., prior to April of 2014. The Code provides:

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

66 Pa.C.S. § 3314.

Ms. Washington testified that she lived on Algon, and intruders moved into the house on Algon, prior to her moving to Fairgreen Street in January of 2013. Also, Ms. Hutchins was customer of record at the Algon address until 2012 and on Fairgreen until 2013. All time periods from which the Complainant contends that she should be relieved of responsibility for PGW bills were more than three years prior to the date that she filed the Complaint in April of 2017.

The charges Ms. Washington questions were incurred more than three years prior to her filing this action. Therefore, the statute of limitations precludes Ms. Washington from any recovery on claims regarding charges incurred prior to April of 2014.

Nevertheless, the Complainant established a *prima facie* case of a high bill. She testified that her bill suddenly increased to over \$5,017 in 2016. PGW records also show an increase in her bill from \$1,443 on June 4, 2016 to \$5,084 on June 9, 2016. (PGW 2)

However, PGW presented substantial rebuttal evidence to support a finding that the balance and increase at issue were not in error. The record supports a finding that the Complainant's current outstanding balance was incurred when she lived at the three addresses on Fairgreen and at her current address on Angus Road.

Ms. Washington became a customer on Fairgreen in January of 2013. By August of 2014, she had accumulated an outstanding balance of \$3,923.87. PGW and Ms. Washington entered a CRP agreement wherein her balance was placed aside, or "frozen," by PGW and she was to pay \$146.27 per month. (PGW 2).

Complainant subsequently lived at various addresses on Fairgreen and her current address on Angus Road. The Complainant did not pay her PGW bill regularly, in full or on time and accumulated an additional outstanding balance of over \$1,400.00. (PGW 2). The Complainant was subsequently removed from the CRP and her balance was "unfrozen," and added to the newly accumulated outstanding amount. Her current outstanding balance at the time of the hearing was \$5,920.88.

Given that PGW presented substantial evidence to rebut the Complainant's *prima facie* case, the burden then fell upon 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*). No preponderant evidence was presented by the Complainant and therefore she cannot prevail on her high bill claim.

Although she did not include it on her Complaint, during the hearing, the Complainant expressed an interest in a payment arrangement. While she has not had a Commission-issued payment arrangement, given that she has made only 8 payments to PGW in the 24 months prior to the hearing and that she has broken five payment arrangements entered into with PGW, the Complainant has not shown a good faith effort to pay her utility bills. (Tr. 42, 48; PGW 3). Therefore, a payment arrangement request will not be entertained at this time. See *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (entered December 6, 2007). Ms. Washington should meet with PGW to discuss enrollment in any available program given that the income and household information that she provided at the time of the hearing were different from that she previously provided to PGW. (Tr. 54-55).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part. 66 Pa.C.S. § 3314.
3. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).

4. Complainant established a *prima facie* case of a high bill. *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980); *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Order entered November 15, 2011).

5. PGW presented evidencing rebutting the *prima facie* case of the Complainant. *Waldron*.

6. Complainant did not present a preponderance of evidence in response to the PGW rebuttal evidence 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Korto Washington against Philadelphia Gas Works at Docket No. C-2017-2598552 is denied and dismissed.
2. That the Secretary mark this docket closed.

Date: October 17, 2017

/s/
Darlene Davis Heep
Administrative Law Judge