

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Calvin Jones	:	
	:	
v.	:	C-2017-2598095
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

In this Initial Decision, Calvin Jones' formal Complaint against Philadelphia Gas Works at Docket No. C-2017-2598095 is denied, in part, with regard to his claim of incorrect billing, and is granted, in part, with regard to his request for a Commission-issued payment arrangement and waiver of late payment charges accumulated after January 6, 2015.

HISTORY OF THE PROCEEDING

On March 29, 2017, Calvin Jones (Complainant or Mr. Jones) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW), at Docket No. C-2017-2598095. In his Complaint, Mr. Jones alleged that there are incorrect charges on his gas bills from PGW in connection with his prior address at 260 W. Queen Lane, Philadelphia, PA 19144. As relief, the Complainant requested that PGW recalculate his bill to reflect the correct gas usage.

On August 31, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated May 8, 2017, notified the parties that an initial hearing was scheduled for Thursday, June 22, 2017, at 10:00 a.m.

A Prehearing Order was issued on June 8, 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.

The initial hearing convened as scheduled on June 22, 2017. Mr. Jones appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Jessica Glace, who is a senior customer review officer in charge of investigating formal and informal complaints filed against PGW. The Respondent sponsored four exhibits which were admitted into the record.

The record in this matter closed on July 21, 2017.

FINDINGS OF FACT

1. The Complainant is Calvin Jones, who currently resides at 6142 Morton Street, Apartment # 1F, Philadelphia, PA. Tr. 6.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant moved to his current address on June 28, 2016. Tr. 11.
4. Prior to moving to his current address, Mr. Jones resided at 260 W. Queen Lane, Philadelphia, PA 19144. Tr. 8.

5. Mr. Jones received gas service from PGW at the Queen Lane address from April 1, 2010 to June 8, 2016. Tr. 22-23, PGW Exhibit 1.

6. On December 8, 2014, a PGW technician responded to a call made by Mr. Jones reporting a suspected gas leak in the basement of the Queen Lane address. Tr. 25-26.

7. During the December 8, 2014 visit to the Queen Lane address, the PGW technician found no gas odor or gas leak reading in the basement of the property. Tr. 26.

8. Also during the December 8, 2014 visit to the Queen Lane address, the PGW technician conducted a piping test on Complainant's meter. Tr. 26.

9. The piping test did not reveal any signs of foreign load on Complainant's meter. Tr. 26.

10. On October 27, 2015, Mr. Jones' gas service at the Queen Lane address was terminated for nonpayment. Tr. 23-24, PGW Exhibit 1.

11. Because the Queen Lane property was a multi-unit building, served by multiple gas meters, a PGW technician had to visit the property to terminate gas services at the meter. Tr. 23-24.

12. Mr. Jones' gas service at the Queen Lane address was restored again at the meter on November 15, 2015. Tr. 23-24, PGW Exhibit 1.

13. The PGW technicians' visits to the Queen Lane address on October 27, 2015 and November 15, 2015 did not report any detectable foreign load on Complainant's meter. Tr. 24.

14. On September 9, 2016, Mr. Jones established gas service in his name at his current address on Morton Street. PGW Exhibit 1.

15. On October 3, 2016, Mr. Jones filed an informal complaint with the Commission's Bureau of Consumer Services (BCS), BCS Case # 3473702, alleging that his gas bills were incorrect due to foreign load. PGW Exhibit 4.

16. On February 9, 2017, BCS issued a decision dismissing the informal complaint at BCS Case # 3473702 after determining that Mr. Jones' balance with PGW was correct as rendered. *Id.*

17. PGW has no record of Mr. Jones contacting the company to report possible foreign load in his gas line during the entire period (April 1, 2010 to June 22, 2017) Mr. Jones has been a customer of the Respondent. Tr. 26-27, PGW Exhibit 4.

18. During the entire period (April 1, 2010 to June 22, 2017) Mr. Jones has been a customer of the Respondent, he has been charged based on actual readings from his gas meter. Tr. 29, PGW Exhibit 2.

19. As of the day of the hearing, Mr. Jones had an outstanding balance of \$2,769.82 in his gas account with PGW. PGW Exhibit 2, Tr. 35.

20. Mr. Jones' income consists of \$567.00 per month in Social Security payments, and \$188.00 per month in Social Security Disability benefits, in addition to \$261.00 per month in food stamps. Tr. 16-17.

21. Mr. Jones' income has changed little since 2010, consisting of Social Security payments, Social Security Disability benefits and food stamps. Tr. 32-33, see also PGW Exhibit 3.

22. Mr. Jones was enrolled in PGW's Customer Responsibility Program (CRP) on July 27, 2010. Tr. 31, PGW Exhibit 3.

23. Mr. Jones was removed from PGW's CRP program on January 6, 2015, for nonpayment and failure to recertify. Tr. 31-32, PGW Exhibit 3.

24. During the period January 1, 2015 through June 2, 2017, PGW assessed \$540.71 in late payment charges against Mr. Jones' account. PGW Exhibit 2.

25. During the 24-month period from June 2015 through June 2017, Mr. Jones made 16 payments towards his account with PGW, eight of which were from various grants he received. Tr. 30, PGW Exhibit 2.

26. Mr. Jones' outstanding balance with PGW does not include any CRP arrearages. Tr. 32.

27. Mr. Jones has never received a payment arrangement issued by the Respondent or the Commission. Tr. 31.

28. Mr. Jones resides at his current address by himself. Tr. 17-18.

DISCUSSION

In the present formal Complaint, Mr. Jones alleged that there are incorrect charges on his gas bills from PGW in connection with his prior address at 260 W. Queen Lane, Philadelphia, PA 19144. As relief, the Complainant requested that PGW recalculate his bill to reflect the correct gas usage.

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 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).

A) Incorrect Billing – Foreign Load

At the hearing, Mr. Jones clarified his incorrect billing claim as a foreign load claim. Mr. Jones testified that early in 2014 he had complained to PGW regarding his gas bill.

Tr. 7, 9. In response to his complaint, PGW conducted an inspection of the Queen Lane address on or about January 17, 2014, and discovered that there was foreign load on Complainant's gas line. Tr. 7, 13. According to Mr. Jones, the Respondent informed him that there was nothing that PGW could do to address the problem, and that the Complainant had to ask the landlord to fix the foreign load issue. Tr. 10-11. Mr. Jones informed his landlord and the Philadelphia Housing Authority of the existence of foreign load. Tr. 7. The Philadelphia Housing Authority (PHA) inspected the Queen Lane address in March of 2014, and agreed with PGW on the existence of the foreign load in Complainant's gas line. Tr. 7-8, 12. The housing authority gave Mr. Jones' landlord three chances, of approximately 30 days each, to fix the problem. Tr. 8, 12-13. However, Mr. Jones' landlord did not comply with the PHA's order. Tr. 8. As a result, six months later, the PHA gave Mr. Jones an emergency voucher to move to his current address. Tr. 8, 11. Mr. Jones moved to the current address in June of 2016. Tr. 11.

In response to Mr. Jones' testimony, PGW's witness Ms. Glace testified that Mr. Jones received gas service from PGW at the Queen Lane address from April 1, 2010 to June 8, 2016. Tr. 22-23, PGW Exhibit 1. Yet, during this entire time, no foreign load was ever reported by Mr. Jones or found by PGW on Mr. Jones' gas line. Tr. 26-27. In particular, Ms. Glace explained that on December 8, 2014, a PGW technician responded to a call made by Mr. Jones reporting a suspected gas leak in the basement of the Queen Lane address. Tr. 25-26. During the December 8, 2014 visit to the Queen Lane address, the PGW technician found no gas odor or gas leak reading in the basement of the property. Tr. 26. While at the Queen Lane address, the PGW technician conducted a piping test on Complainant's meter but found no signs of foreign load. Tr. 26.

On October 27, 2015, Mr. Jones' gas service at the Queen Lane address was terminated for nonpayment. Tr. 23-24, PGW Exhibit 1. Because the Queen Lane property was a multi-unit building, served by multiple gas meters, a PGW technician had to visit the property to terminate gas service at the meter, as opposed to terminating it at the curb. Tr. 23-24. Mr. Jones' gas service at the Queen Lane address was restored again at the meter on November 15, 2015. Tr. 23-24, PGW Exhibit 1. The PGW technicians' visits to the Queen Lane

address on October 27, 2015 and November 15, 2015, did not report any detectable foreign load on Complainant's meter. Tr. 24.

Ms. Glace testified that Mr. Jones has an outstanding balance of \$2,769.82 on his gas account with PGW. PGW Exhibit 2, Tr. 35. According to Ms. Glace, this balance is a result of unpaid bills and late payment charges that have accrued in Complainant's account. Tr. 28. She explained that during the entire period that Mr. Jones has been a customer of the Respondent (April 1, 2010 to June 22, 2017), he has been charged based on actual readings from his gas meter. Tr. 29, PGW Exhibit 2.

After carefully considering all the evidence collected in this matter, I find that the Complainant has failed to carry his burden of proving by a preponderance of the evidence that there are incorrect charges in his gas bill from PGW due to the existence of foreign load on his service line for the Queen Lane address. First, the Complainant was unable to explain why he moved to his current address in June of 2016, if the PHA discovered the foreign load problem in March of 2014, allowed the landlord approximately 90 days to fix the problem, and provided the Complainant with an emergency voucher for a different residence six months later. The entire process as described by Mr. Jones should have not taken longer than nine months. Yet, instead of moving out of the Queen Lane address sometime in early 2015, Mr. Jones moved out in June of 2016.

Besides this inconsistency in his testimony, Mr. Jones also failed to rebut PGW's testimony that no foreign load was ever reported or found on Mr. Jones' gas line at the Queen Lane address. If foreign load was detected by PGW in January of 2014, and not corrected by his landlord as claimed by Mr. Jones, its presence would have been detected during PGW's visits to the Queen Lane address in December of 2014 or in October and November of 2015. No such detection occurred. Mr. Jones did not return to PGW to follow up on his foreign load complaint until he filed an informal complaint with the Commission's Bureau of Consumer Services, BCS Case # 3473702, on October 3, 2016. PGW Exhibit 4. On February 9, 2017, BCS issued a decision dismissing the informal complaint after determining that Mr. Jones' balance with PGW was correct as rendered. *Id.*

In view of the above, I shall dismiss the portion of the Complaint claiming the existence of incorrect charges in Mr. Jones' account with PGW.

B) Payment Arrangement

At the hearing, Mr. Jones requested a payment arrangement to retire his outstanding balance with PGW. This was the first time the Complainant averred his inability to pay his gas bills to PGW. PGW did not object to this new claim.

Mr. Jones testified that he resides at his current address by himself. Tr. 17-18. His income consists of \$567.00 per month in Social Security payments, and \$188.00 per month, in Social Security Disability benefits, in addition to \$261.00 per month in food stamps. Tr. 16-17.

Ms. Glace testified that Mr. Jones has never received a payment arrangement issued by the Respondent or the Commission. Tr. 31. She also explained that Mr. Jones was enrolled in PGW's CRP program on July 27, 2010, but he was removed from PGW's CRP program on January 6, 2015, for nonpayment and failure to recertify. Tr. 31-32, PGW Exhibit 3. Mr. Jones' outstanding balance with PGW does not include any CRP arrearages. Tr. 32.

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 arrangements. This law authorizes the Commission to establish payment arrangements between a public utility and its customers, as well as applicants for service, within prescribed limits that the Commission must follow. 66 Pa.C.S. § 1405(a). In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously where a utility has lawfully terminated a customer for nonpayment. Specifically, the Commission should exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills or who have experienced a significant change of

circumstances beyond their control. *George Crawford v. National Fuel Gas Distribution Corp.*, C-20066348 (Opinion and Order entered December 6, 2007). Section 1405 of the Public Utility Code regarding payment arrangements reads in pertinent part:

(a) *General rule.* --

The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. the commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

(b) *Length of payment arrangements.* --

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

* * *

(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 agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa.C.S. § 1405(a), (b) and (d). In addition, "Household income" is defined in section 1403 the Public Utility Code as "[t]he combined gross income of all adults in a residential household

who benefit from the public service." 66 Pa.C.S. § 1403. Mr. Jones' household income is \$1,016 per month¹ for a household of one. This income falls below 100% of the Federal Poverty line.² Mr. Jones is a level 1 income customer. Pursuant to Section 1405(b)(1) of the Code, the Complainant is eligible for a payment arrangement over a five-year or 60-month period. Complainant shall make monthly payments consisting of his current charges or budget bill plus one sixtieth (1/60th) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

At the hearing, Ms. Glace described Mr. Jones' payment history as poor. Tr. 30. However, I do not find that to be the case. In fact, during the 24-month period June 2015 through June 2017, Mr. Jones made 16 payments towards his account with PGW, eight of which were from various grants he received. Tr. 30, PGW Exhibit 2. I find that Mr. Jones' payment history with PGW shows a good faith effort on his part to pay his gas bills to the Respondent.

In view of the above income and payment history of the Complainant, I find that Mr. Jones qualifies for a Commission-issued payment arrangement on his outstanding balance with PGW.

In addition, I find that Mr. Jones qualifies for a waiver of the late payment charges accumulated in his account since he was removed from CRP. The Pennsylvania Public Utility Code (Code) and the Commission's regulations allow the Commission to "order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level." 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d). The record in this case indicates that Mr. Jones was enrolled in PGW's CRP program from July 27, 2010, through January 6, 2015, with a household income below 100% of the Federal poverty line. See PGW Exhibit 3. At the hearing, Mr. Jones testified that his income has changed little since 2010, consisting of Social

¹ \$567.00 per month in Social Security payments + \$188.00 per month in Social Security Disability benefits + \$261.00 per month in food stamps = \$1,016.00 per month.

² *Federal Register*, Vol. 82, No. 19, January 31, 2017, pp. 8831-8832. Also, see <http://aspe.hhs.gov/poverty>.

Security payments, Social security Disability benefits and food stamps. Tr. 32-33, see also PGW Exhibit 3. Therefore, any late payment charges assessed against his outstanding balance during the period from January 2015 to July 2017 can be waived by the Commission pursuant to the provisions of 66 Pa.C.S. § 1409 and 52 Pa.Code § 56.22.

During the period January 1, 2015 - June 2, 2017, PGW assessed \$540.71 in late payment charges against Mr. Jones' account. PGW Exhibit 2. In accordance with the provisions of 66 Pa.C.S. § 1409 and 52 Pa.Code § 56.22, the Respondent shall credit the Complainant's account in the amount of \$540.71.

In view of the above, Calvin Jones' formal Complaint against Philadelphia Gas Works is denied, in part, with regard to his claim of incorrect billing, and is granted, in part, with regard to his request for a Commission-issued payment arrangement and waiver of late payment charges accumulated after January 6, 2015.

Before concluding, I would encourage the Complainant to apply for re-enrollment in PGW's CRP program. As mentioned above, Mr. Jones currently has no CRP arrearages in his account with PGW and his current income would make him eligible for the program.

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. The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, *et seq.*, applies to this proceeding.

4. 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.

5. It is Commission policy to exercise its discretion to issue payment arrangements when customers have demonstrated some evidence of a good-faith effort in paying utility bills or when customers have experienced a change of circumstances outside of their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 at 15-16 (Order entered December 6, 2007), see also *Susan Hewitt v. PGW Energy Co.*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013).

6. "Household income" is defined as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403.

7. The Pennsylvania Public Utility Code and the Commission's regulations allow the Commission to "order a waiver of any late payment charges levied by a public utility as a result of a delinquent account for customers with a gross monthly household income not exceeding 150% of the Federal poverty level." 66 Pa.C.S. § 1409, 52 Pa.Code § 56.22(d).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Calvin Jones against Philadelphia Gas Works at Docket No. C-2017-2598095 is granted, in part, and denied, in part.

2. That Calvin Jones' formal Complaint against Philadelphia Gas Works is denied with regard to his claim of incorrect billing.

3. That Calvin Jones' formal Complaint against Philadelphia Gas Works is granted with regard to his request for a payment arrangement and waiver of late payment charges.

4. That Philadelphia Gas Works shall credit Calvin Jones' account in the amount of \$540.71.

5. That Calvin Jones shall make monthly payments consisting of his current charges or budget bill plus one sixtieth (1/60th) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

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

7. That the Secretary mark this docket closed.

Date: November 27, 2017

_____/s/
Eranda Vero
Administrative Law Judge