

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Raymone Jean	:	
	:	
v.	:	F-2017-2616895
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants, in part, and denies, in part, Raymone Jean’s formal Complaint against Philadelphia Gas Works at Docket No. F-2017-2616895. Raymone Jean’s formal Complaint is denied with regard to her claim that her gas bill issued on May 15, 2017 was incorrect and abnormally high because she failed to carry her burden of proof. Raymone Jean’s formal Complaint is granted to the extent that it requests a Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On July 18, 2017, Raymone Jean (Complainant or Ms. Jean) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or the Company) with the Pennsylvania Public Utility Commission (Commission) alleging that there are incorrect charges in her account with PGW. In particular, she alleged that the gas bills that she received in January and February of 2017, were estimated, incorrect and “highly unusual.” Complaint ¶ 4. As relief,

Ms. Jean requested that the Commission investigate PGW's billing methods to ensure that her meter readings are accurate.

The Complaint was filed as a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision, at BCS Case # 3528310, which established a payment arrangement on behalf of the Complainant upon finding that she was a Level 1 income customer.

On August 21, 2017, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

By Hearing Notice dated August 28, 2017, a hearing was scheduled for Tuesday, October 10, 2017, at 1:30 p.m., and the matter was assigned to me.

A Prehearing Order was issued on September 18, 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 October 10, 2017. The Complainant appeared *pro se* and testified in support of the Complaint. The Complainant's daughter, Pearl Pierre-Paul, also testified in support of the Complaint. Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Adrian Pinkney, who is a Customer Review Officer for PGW in charge of investigating formal and informal customer complaints filed with the Commission against PGW. The Respondent sponsored five exhibits, which were admitted into the record.

Prior to the conclusion of the hearing, I instructed the Respondent to test the meter serving the Service Address for accuracy and submit the results of the meter test as a late-filed exhibit. PGW's counsel requested one month, or until November 10, 2017, to complete the meter test and submit its results. Tr. 64. The request was granted and the Complainant was instructed to file any written objections to PGW's late-filed exhibit by no later than November 21, 2017. Tr. 66.

By cover letter dated October 30, 2017, PGW submitted PGW late-filed Exhibit 6. Ms. Jean did not submit any written objections to PGW's late-filed exhibit. Consequently, PGW late-filed Exhibit 6 is admitted into the record in this matter.

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

FINDINGS OF FACT

1. The Complainant is Raymone Jean, who resides at 6645 N. 20th Street, Philadelphia, PA 19138 (Service Address). Tr. 6.

2. From November 1, 2015 to August 23, 2016, Ms. Jean resided at 194 E. Cheltenham Avenue, Apartment # 2F, Philadelphia, PA 19120. Tr. 6, 10, PGW Exhibit 1.

3. On November 12, 2016, Ms. Jean became the ratepayer of record with PGW for gas service at the Service Address. Tr. 11, PGW Exhibit 1.

4. From November 12, 2016 to September 15, 2017, Ms. Jean was billed for gas usage at the Service Address as follows:

Billing Date	Number of Days	CCF Usage	HDD¹	Transaction Amount
12/14/2016	31	48	602	\$77.41
1/18/2017	35	188	985	\$260.67
2/15/2017	28	135	679	\$210.65
3/16/2017	29	122	604	\$190.64

¹ Heating Degree Day (HDD) - A unit measuring the extent to which the outdoor mean (average of maximum and minimum) daily dry-bulb temperature falls below (in the case of heating) or rises above (in the case of cooling) an assumed base. The base is normally taken as 65°F for heating and for cooling unless otherwise designated. One degree-day is counted for each degree of deficiency below (for heating) or excess over (for cooling) the assumed base, for each calendar day on which such deficiency or excess occurs. James H. Cawley and Norman Kennard, *Rate Case Handbook, A Guide to Utility Ratemaking before the Pennsylvania Public Utility Commission*, Glossary of Terms, Appendix Q (Pa. PUC 1983).

Billing Date	Number of Days	CCF Usage	HDD	Transaction Amount
4/17/2017	29	5	438	\$19.95
5/15/2017	29	105	166	\$171.28
6/14/2017	32	7	49	\$22.58
7/14/2017	30	4	0	\$18.41
8/14/2017	29	4	0	\$18.41
9/15/2017	33	5	7	\$19.65

PGW Exhibit 1.

5. From November 12, 2016 to September 15, 2017, Ms. Jean has been charged based on actual readings from her gas meter. Tr. 38, PGW Exhibit 1.

6. From November 12, 2016 to February 8, 2017, Ms. Jean's account with PGW was enrolled in electronic billing through her daughter's, Pearl Pierre-Paul's, e-mail account. Tr. 30, 31, 34.

7. Pearl Pierre-Paul assisted the Complainant with paying her gas bills online. Tr. 31, 33.

8. On February 8, 2017, the Complainant informed the Respondent that she was "locked out" of her electronic account with PGW and requested paper statements via regular mail. Tr. 30.

9. The Service Address has been served by PGW's gas meter # 2212637 since November 10, 2016. Tr. 41, PGW Exhibit 1.

10. On May 19, 2017, Ms. Jean filed an Informal complaint with BCS at BCS Case # 3528310 alleging her inability to pay her gas bills to PGW and requesting a payment arrangement. PGW Exhibit 3.

11. On June 12, 2017, BCS issued a decision on BCS Case # 3528310 establishing a payment arrangement on behalf of the Complainant upon finding that Ms. Jean was a Level 1 income customer. PGW Exhibit 3.

12. On October 18, 2017, PGW removed the gas meter serving the Service Address for testing. PGW late-filed Exhibit 6.

13. Gas meter # 2212637 was tested on October 25, 2017, and the results indicated that it tested accurate within the 2% margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. PGW late-filed Exhibit 6.

14. As of the day of the hearing, Ms. Jean resided at the Service Address with her husband, Wilson Pierre-Paul, and her adult daughter, Pearl Pierre-Paul. Tr. 61-62.

15. Ms. Jean's income consists of \$1,332.00 per month in Social Security Disability benefits. Tr. 61.

16. Pearl Pierre-Paul works three hours per week at a payrate of \$12.00 per hour. Tr. 61.

17. Wilson Pierre-Paul is unemployed and has no alternative sources of income. Tr. 61-62.

18. As of the day of the day of the hearing, Ms. Jean's total outstanding balance with PGW was \$1,135.76. Tr. 37, PGW Exhibit 1.

19. The outstanding balance includes \$956.80 in arrearages accumulated at the Service Address in addition to \$178.96 in arrearages accumulated at the 194 E. Cheltenham Avenue address. Tr. 37, PGW Exhibit 1.

DISCUSSION

In her formal Complaint, Ms. Jean alleged that there are incorrect charges on her gas bills. In particular, she alleged that the gas bills that she received in January and February of 2017, were estimated, incorrect and “highly unusual.” Complaint ¶ 4. As relief, Ms. Jean requested that the Commission investigate PGW’s billing methods to ensure that her meter readings are accurate.

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).

At the evidentiary hearing, Ms. Jean amended her formal Complaint to challenge as abnormally high her gas bill issued on May 15, 2017, instead of her January and February 2017 bills as stated in her Complaint form. Tr. 25, 34. More specifically, she testified that she did not believe that she used the 105 CCF of gas for which she was charged on May 15, 2017. When asked to elaborate on her claim, Ms. Jean stated that “in April and May” she turned the thermostat down to zero and did not turn it back up. *Id.*

In addition, Ms. Jean testified that she did not receive any paper bills from PGW until she complained to the Respondent in February of 2017. She also explained that her daughter, Pearl Pierre-Paul, helped her pay her gas bill online. Ms. Jean added that she resides at the Service Address with her husband, Wilson Pierre-Paul, and her adult daughter, Pearl Pierre-Paul. Tr. 61-62.

PGW did not object to the last-minute amendment of the Complaint. Instead, PGW argued that the present Complaint was filed using a formal complaint form that the Commission sends to the customers who indicate that they wish to appeal a BCS decision – in this case BCS’ decision at BCS Case #3528310, which granted Ms. Jean’s request for a payment arrangement. Tr. 15-18, PGW Exhibit 4, see also Tr. 24. In the formal Complaint, Ms. Jean alleged that there are incorrect charges in her January and February bills from PGW. *Id.* However, this issue was never raised before, either directly to PGW nor through the BCS informal complaint process. Tr. 19, 23, 38-39, 59, PGW Exhibit 5.

PGW's witness, Ms. Pinkney, testified that from November 1, 2015 to August 23, 2016, the Complainant was the customer of record for gas service at 194 E. Cheltenham Avenue, Apartment # 2F, Philadelphia, PA 19120. Tr. 35-36, PGW Exhibit 1. On November 12, 2016, Ms. Jean became the ratepayer of record with PGW for gas service at the Service Address. *Id.* As of the day of the hearing, Ms. Jean's total outstanding balance with PGW was \$1,135.76. Tr. 37, PGW Exhibit 1. The outstanding balance includes \$956.80 in arrearages accumulated at the Service Address in addition to \$178.96 in arrearages accumulated at the 194 E. Cheltenham Avenue address. Tr. 37, PGW Exhibit 1.

Ms. Pinkney testified that PGW did not issue any estimated bills to Ms. Jean during the period November 12, 2016 to October 10, 2017. Tr. 38, PGW Exhibit 1. In addition, she testified that Ms. Jean's account with PGW was enrolled in electronic billing until February 8, 2017. Tr. 30, 31, 34. The personal e-mail account connected to Ms. Jean's electronic account with PGW belonged to the Complainant's daughter, Pearl Pierre-Paul. On February 8, 2017, the Complainant informed the Respondent that she was "locked out" of her electronic account with PGW and requested paper statements via regular mail. Tr. 30.

Ms. Pinkney also testified that the Service Address has been served by PGW's gas meter # 2212637 since November 10, 2016, and that no other meter is located at the property in question. Tr. 41, PGW Exhibit 1. She explained that PGW's records contain no indication that gas meter # 2212637 was not functioning properly or that Ms. Jean was being billed improperly for gas. Tr. 41.

On October 25, 2017, PGW tested the gas meter serving the Service Address for accuracy. The results of the meter test indicated that the meter was accurate within the 2% margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. PGW late-filed Exhibit 6.

High Billing Dispute

The burden of proof for high billing complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission's (PSC's) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

Consistent with the Commission's holding in *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010), the *Waldron* Rule allows a complainant to establish a *prima facie* case in a high bill complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In evaluating a high bill complaint, the Commission may consider such evidence as "the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), and any other relevant facts or circumstances that come to light during the proceeding." *Id.* at 6 (emphasis added). See *Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011).

After carefully considering all the evidence collected in this matter, I find that the Complainant has failed to carry her burden of proving that her gas bill issued on May 15, 2017 was abnormally high. From November 12, 2016 to September 15, 2017, Ms. Jean's gas usage and charges at the Service Address was as follows:

Billing Date	Number of Days	CCF Usage	HDD	Transaction Amount
12/14/2016	31	48	602	\$77.41
1/18/2017	35	188	985	\$260.67
2/15/2017	28	135	679	\$210.65
3/16/2017	29	122	604	\$190.64
4/17/2017	29	5	438	\$19.95
5/15/2017	29	105	166	\$171.28
6/14/2017	32	7	49	\$22.58
7/14/2017	30	4	0	\$18.41
8/14/2017	29	4	0	\$18.41
9/15/2017	33	5	7	\$19.65

PGW Exhibit 1. As of the day of the hearing, Ms. Jean had been the customer of record for gas service at the Service Address for less than a year. While Ms. Jean's usage history at the Service Address (from November 12, 2016 to September 15, 2017) highlights a pattern of seasonal usage with colder months characterized by higher gas usage than warmer months, her usage history is too short to conduct a year-to-year usage analysis or comparison. The gas bill issued on April 17, 2017 seems to corroborate Ms. Jean's testimony that she turns down the thermostat in April; however, without a longer usage history at the Service Address it is difficult to determine if the May 15, 2017 bill is inaccurate or part of a pattern of turning the thermostat back on in spring months. I find that PGW submitted on the record testimony and exhibits which successfully rebutted the Complainant's prima facie case of incorrect billing. In turn, neither Ms. Jean nor Ms. Pierre-Paul provided additional evidence to rebut the evidence of the Respondent. Lastly, I find it telling that the informal complaint Ms. Jean filed with BCS on May 19, 2017, contained no allegations of high billing or meter inaccuracy in connection with the gas bill issued on May 15, 2017.

Payment Arrangement

At the hearing, Ms. Jean testified that she resides at the Service Address with her husband, Wilson Pierre-Paul, and her adult daughter, Pearl Pierre-Paul. Tr. 61-62. She

explained that her income consists of \$1,332.00 per month in Social Security Disability benefits and that Mr. Pierre-Paul is unemployed and has no alternative sources of income. Tr. 61-62. Pearl Pierre-Paul works three hours per week at a payrate of \$12.00 per hour. Tr. 61.

In response, Ms. Pinkney testified that Ms. Jean has received and defaulted on two Company-issued payment arrangements. Tr. 39, PGW Exhibit 2. On May 19, 2017, Ms. Jean filed an Informal complaint with BCS at BCS Case # 3528310 alleging her inability to pay her gas bills to PGW and requesting a payment arrangement. PGW Exhibit 3. On June 12, 2017, BCS issued a decision on BCS Case # 3528310 establishing a payment arrangement on behalf of the Complainant upon finding that Ms. Jean was a level 1 income customer. PGW Exhibit 3. On July 18, 2017, Ms. Jean filed the present formal Complaint as a timely appeal to the BCS determination at BCS Case No. 3528310. Tr. 15-18, PGW Exhibit 4.

This proceeding is a *de novo* review of the BCS determination of an appropriate payment arrangement for Ms. Jean's account. 52 Pa.Code § 56.403(a). *De novo* review involves full consideration of the case anew. *Young v. Department of Environmental Resources*, 144 Pa. Cmwlth. 16, 600 A.2d 667 (1991).

The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401, et seq. (the Act or Chapter 14) applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints. 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. 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), see also *Susan Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013).

A review of Ms. Jean's payment history reveals that she made three payments in a period of ten months (November to September 2017). See PGW Exhibit 1. Ms. Jean's total outstanding balance with PGW was \$1,135.76. Tr. 37, PGW Exhibit 1. For these reasons, I find that a payment arrangement is appropriate in this case.

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.

* * *

66 Pa.C.S. § 1405(a) and (b). In addition, "Household income" is defined in section 1403 as "[t]he combined gross income of all adults in a residential household who benefit from the public service." 66 Pa.C.S. § 1403 (Definition of "Household income").

The Complainant's monthly household income is \$1,488.00² for a household of three. Ms. Jean's household income falls below 150% of the Federal poverty level. As a Level 1 income customer, Ms. Jean is required to retire her balance with PGW within five years, or 60 months. See 66 Pa.C.S. § 1405(b)(2).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.

2. The party filing the Complaint bears the burden of proving that she is entitled to relief from the Commission. 66 Pa.C.S.A. § 332(a).

3. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

4. In establishing whether a "high bill" has been demonstrated, while the accuracy of the meter is an important factor in resolving billing disputes, the Commission will also consider the billing history of the Complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98, 100 (1980).

² Ms. Jean's gross household income consists of \$1,332.00 per month from her Social Security Disability benefits in addition to \$156.00 per month (\$12.00/hr x 3 hrs/week x 52 weeks/yr ÷ 12 months/yr) from Ms. Pierre-Paul's part-time employment, for a total of \$1,488.00 per month.

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

6. 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.

7. 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. PECO Energy Co.*, Docket No. F-2011-2273271, (Opinion and Order entered Sept. 12, 2013).

8. "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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' late-filed Exhibit 6 shall be admitted into the record in this matter.

2. That Raymone Jean's formal Complaint against Philadelphia Gas Works at Docket No. F-2017-2616895 is granted, in part, and denied, in part.

