

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Blondell Simmons	:	
	:	
v.	:	C-2017-2608497
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Complaint because she failed to sustain her burden of proving that Philadelphia Gas Works provided her with inadequate service in violation of 66 Pa.C.S. § 1501.

HISTORY OF THE PROCEEDING

On May 30, 2017, Blondell Simmons (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “other” and alleged that PGW has manipulated her service, her service plan, and has increased the cost of her service plan.

On June 29, 2017, Respondent filed an Answer denying that it manipulated the service or the service plan at 2205 N. 13th Street, 3B, Philadelphia, PA (service address). Respondent further indicated: that on March 21, 2017, the Complainant went to a PGW Service Center to apply for PGW’s

Customer Responsibility Program (CRP); that PGW determined that CRP was non-beneficial and advised the Complainant of the budget; that the Complainant agreed to the budget; that on April 7, 2017, the Complainant went to a PGW Service Center to be taken off of the budget; that PGW informed the Complainant that she would be billed based on her usage; and that the Complainant understood that she would be billed based on her usage.

By Hearing Notice dated July 12, 2017, a hearing was scheduled for September 12, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on July 13, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

By Hearing Cancellation/Reschedule Notice dated September 13, 2017, the hearing was rescheduled for October 31, 2017, at 10:00 a.m.

The hearing convened as scheduled on October 31, 2017. Complainant appeared *pro se* and testified. Complainant offered two exhibits which were both admitted into the record. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jennifer Pearson, a Customer Review Officer. Respondent offered three exhibits which were all admitted into the record.

The record in this case consists of a 77-page transcript and five exhibits. The record closed on November 28, 2017, when I received the transcript of the October 31, 2017, hearing.

FINDINGS OF FACT

1. The Complainant in this case is Blondell Simmons.

2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant resides at 2205 North 13th Street, Apartment 3B, Philadelphia, PA 19133 (service address).
4. As of the date of the hearing, the Complainant was carrying a zero balance on her PGW account for service. Tr. 18, 58.
5. PGW customers who do not participate in PGW's Customer Responsibility Program (CRP) are billed based on their actual gas usage. Tr. 31.
6. Separate from CRP, PGW has a billing option called the Easy Way Budget Billing Program, which is a program designed to evenly distribute a customer's payments over a 12-month period. Tr. 31-32.
7. The goal of the Easy Way Budget Billing Program is to enable customers to avoid drastic dips and spikes in their billing. Tr. 32.
8. Customers who participate in the Easy Way Budget Billing Program will end up paying an additional fee at the end of the 12-month period if they are carrying an unpaid balance on their account. Tr. 32.
9. Each monthly bill that is issued is numbered to identify the month of the budget billing program, with a January bill noted as "Budget Bill 1," a February bill noted as "Budget Bill 2" all the way through to December as "Budget Bill 12." Tr. 33.
10. Even if a customer is carrying a reserve balance, the customer must still make monthly budget payments towards their Easy Way Budget Program; failure to make two or more payments will result in the customer being removed from the program. Tr. 37, 55.

11. If a customer participating in the Easy Way Budget Billing Program receives a LIHEAP grant, that customer must still make their monthly budget bill payments. Tr. 58.

12. PGW does not impose a penalty fee if a person is removed from, or requests to be removed from, the Easy Way Budget Billing Program. Tr. 55.

13. If a customer is removed from the Easy Way Budget Billing Program with a balance owed, the customer must then pay that balance to PGW. Tr. 55-56.

14. Once a customer is removed from the Easy Way Budget Billing Program, PGW then bills them based on their actual usage. Tr. 38.

15. Complainant previously participated in PGW's Easy Way Budget Billing Program. Tr. 20-21.

16. Complainant has never been on the Easy Way Budget Billing Program for a full 12-month cycle due to either non-payment or because she asked to be removed from the program. Tr. 33.

17. On April 24, 2014, the Complainant contacted PGW requesting to be placed on budget billing. Tr. 41-42; PGW Exh. 2.

18. Although the Complainant activated her budget billing, she did not make the required first payment. Tr. 43.

19. On May 19, 2014, the Complainant contacted PGW to reactivate her budget billing because she was not aware that her budget bill would be due immediately upon activation. Tr. 43; PGW Exh. 2.

20. PGW restarted the Complainant's budget and informed her that she would have to pay \$48.00 by June 11, 2014. Tr. 43; PGW Exh. 2.

21. On March 16, 2015, a PGW supervisor informed the Complainant that grants are applied to her account balance and not her monthly budget bill, and that since she was on a budget and autopay, she must still pay her monthly budget bill. Tr. 44; PGW Exh. 2.

22. The Complainant requested to cancel budget billing until her credit was depleted. Tr. 44-45; PGW Exh. 2.

23. On March 16, 2015, PGW honored the Complainant's request and removed her from budget billing. Tr. 44; PGW Exh. 2.

24. On March 16, 2015, Complainant called PGW requesting to be placed back on budget billing. Tr. 46; PGW Exh. 2.

25. On March 17, 2015, the Complainant called PGW to cancel her autopay and be removed from budget billing. Tr. 46-47; PGW Exh. 2.

26. On March 17, 2015, PGW honored the Complainant's request and removed her from autopay and budget billing. Tr. 47; PGW Exh. 2.

27. Once removed, PGW billed the Complainant for her actual usage. Tr. 45, 48.

28. On October 12, 2015, the Complainant called PGW to be placed back on the Easy Way Budget Billing Program. Tr. 47; PGW Exh. 2.

29. On October 12, 2015, PGW placed the Complainant back on the Easy Way Budget Billing Program. Tr. 47; PGW Exh. 2.

30. On November 5, 2015, the Complainant called PGW to be removed from the Easy Way Budget Billing Program. Tr. 48; PGW Exh. 2.

31. PGW informed the Complainant that if she cancelled her budget billing, her monthly bills could increase. Tr. 49; PGW Exh. 2.

32. The Complainant opted to stay on the Easy Way Budget Billing Program. Tr. 49; PGW Exh. 2.

33. On an unspecified date, PGW removed the Complainant from the Easy Way Budget due to non-payment. Tr. 52.

34. On January 20, 2016, the Complainant called PGW to be placed back on the Easy Way Budget Billing Program. Tr. 52; PGW Exh. 2.

35. On January 20, 2016, PGW placed the Complainant back on the Easy Way Budget Billing Program. PGW Exh. 2.

36. PGW issued the Complainant a bill on February 14, 2017 which was identified as "Budget Bill 2" and advised: "[y]our budget payment plan builds a reserve during warm months to avoid high payments in colder months. Your account currently holds a reserve balance of \$131.46." Tr. 34; Comp. Exh. 1.

37. PGW's February 14, 2017 bill further advised: "[t]hank you for taking advantage of PGW's Easy Way Budget Plan. Your plan will be reviewed a minimum of three times a year to ensure the amount you are paying is in line with your gas usage." Tr. 24; Comp. Exh. 1.

38. PGW issued the Complainant a bill on March 14, 2017 which was identified as "Budget Bill 3" and advised: "[y]our budget payment plan builds a reserve during warm months to avoid high payments in colder months. Your account currently holds a reserve balance of \$71.91." Tr. 35; Comp. Exh. 2.

39. PGW's March 14, 2017 bill further advised: "[y]our Easy Way Budget is past due. Prompt payment will ensure the continuation of your budget plan." Tr. 35; Comp. Exh. 2.

40. PGW subsequently removed the Complainant from the Easy Way Budget Billing Plan for non-payment. Tr. 38.

41. On March 21, 2017, the Complainant went to PGW's Center City Office to apply for CRP. Tr. 52, 73; PGW Exh. 2.

42. A PGW Representative determined that CRP was not beneficial to the Complainant and advised that she should instead participate in PGW's Easy Way Budget Billing Program. Tr. 53, 73; PGW Exh. 2

43. During this visit, the Complainant voiced concerns about how LIHEAP would be applied to her account while she was on the Easy Way Budget Billing Program. Tr. 53; 73; PGW Exh. 2.

44. A PGW Representative explained to the Complainant how the Easy Way Budget Billing Program works. Tr. 53, 73; PGW Exh. 2.

45. Following the PGW Representative's explanation, the Complainant requested to be placed on the Easy Way Budget Billing Program. Tr. 53, 73; PGW Exh. 2.

46. As of the date of the hearing, PGW was billing the Complainant based on her actual usage at the service address. Tr. 22.

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 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. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

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).

In the present case, the Complainant alleged that, despite her multiple attempts to inform PGW that she wished to be billed solely for her actual usage, PGW continued to manipulate her and place her on its Easy Way Budget Billing Program. Complainant has raised a claim of inadequate service.

PGW is required by law to provide its customers with adequate, safe and reasonable service with respect to its service. As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S.A. § 1501 requires public utilities to provide reasonable and adequate, not perfect, service. The statute at 66 Pa.C.S.A. § 1501, provides, in relevant part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility. (footnote omitted).
478 A.2d at 949.

The statutory definition of "service" is to be broadly construed.¹ *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PGW's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

¹ "Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . 66 Pa.C.S.A. § 102.

Although the Complainant alleged that PGW provided her with inadequate service because she only ever wanted to be billed for her actual usage and never wanted to participate in PGW's budget billing program,² the record reflects that the Complainant had several discussions with PGW representatives, during which she requested to be placed on PGW's budget billing program.³ Moreover, the record reflects that it was explained to the Complainant how any energy assistance grants she received would be applied to her account, and that she would be required to make a monthly payment towards her balance even if she was carrying a credit (referred to as a reserve) on her account.⁴ Since the record demonstrates that the Complainant actively sought to participate in PGW's budget billing program, I cannot conclude that PGW manipulated her service agreement by placing her on the Easy Way Budget Billing Program, or that it provided her with inadequate service.

Accordingly, the Complainant's Complaint is denied.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S.A. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

² Tr. 25, 75.

³ Tr. 41-43, 46-47, 52-53, 73; PGW Exh. 2.

⁴ Tr. 43-44, 53, 73; PGW Exh. 2.

5. PGW did not provide the Complainant with inadequate service in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Blondell Simmons against Philadelphia Gas Works at Docket No. C-2017-2608497 is denied; and
2. That the record at Docket No. C-2017-2608497 be marked closed.

Date: February 20, 2018

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge