

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christine Castro	:	
	:	
v.	:	F-2017-2606743
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The undersigned through this decision finds that the Complainant failed to sustain her burden of proof that she paid for gas service rendered. The record evidence shows that the Complainant has a poor payment history. Therefore, the decision follows Commission precedent and does not grant a payment arrangement to the Complainant. The formal complaint is dismissed.

HISTORY OF THE PROCEEDING

On May 26, 2017, Complainant, Christine Castro, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against Philadelphia Gas Works (PGW or Company or Respondent). The Complainant alleged that there were incorrect charges on her bill. The Complainant also alleged that the utility threatened to terminate gas service or already terminated gas service. The Complainant also requested a payment arrangement. The Complainant does not dispute that she owes the Respondent for gas service rendered. The Complainant does dispute the alleged amount owed and contends that it should be less.

The Complaint was served electronically (eService) by the Commission's Secretary on May 30, 2017, according to the audit history of the docket. The eService is pursuant to the Waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

On June 20, 2017, Graciela Christlieb, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer admitted that it sent the Complainant a termination notice for 1916 E. Venango Street, Philadelphia, Pennsylvania (service address) and that the Complainant sought a payment arrangement for service at the service address. The Answer denied that there are incorrect charges for billed service and that the actions of the Respondent were improper.

A Hearing Notice dated June 23, 2017, notified the parties that an initial in-person hearing was scheduled for Tuesday, August 1, 2017, at 10:00 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) as the presiding officer.

A Prehearing Order dated June 26, 2017, provided procedural rules and guidelines for the proceeding and emphasized the following:

- (1) a request to change the scheduled hearing should be sent at least five days prior to the hearing date;
- (2) the request for a hearing change is to be in writing and sent to all parties of record; and
- (3) a caution that Complainant may lose the case if she does not take part in the hearing and present evidence on the issues raised.

The evidentiary hearing convened as scheduled. Christine Castro¹ appeared representing herself and was accompanied by one witness, Jessica Castro, who is the Complainant's daughter. Ms. Christlieb appeared accompanied by one witness, Tiffany Jones who testified representing the Respondent.

¹ Ms. Castro's married name is Christine DeJesus, Castro is her maiden name. Tr. 10, 21.

Ms. Castro, the Complainant, submitted two exhibits— (1) a copy of a one page letter from the Respondent informing the Complainant about a municipal lien on the service address marked as Complainant Exhibit 1; and (2) a copy of a money order marked as Complainant Exhibit 2. The Respondent objected to the admission of Complainant Exhibit 1. The objection was overruled. Complainant Exhibit 2 was admitted without objection. Ms. Jessica Castro testified but did not sponsor any exhibits.

Ms. Christlieb presented one witness, Tiffany Jones. The witness supported testimony for the following five exhibits:

- (1) PGW Exhibit 1 – Account Statement for service address;
- (2) PGW Exhibit 2 – Contacts for account;
- (3) PGW Exhibit 3 – 10-Day shut-off notice;
- (4) PGW Exhibit 4 – Bureau of Consumer Service (BCS) Case No. 3510459 informal complaint and decision; and
- (5) PGW Exhibit 5 – Complainant’s PGW gas bills from January 2017 through May 2017.

All five exhibits were admitted into the record without objection. The transcript consists of 83 pages of transcribed testimony. The record closed on September 5, 2017, when the transcript was received by the undersigned. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Christine Castro, who received residential gas service from the Respondent at 1916 E. Venango Street, Philadelphia, Pennsylvania (service address).

Tr. 8.

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility that provides gas distribution service in the Commonwealth of Pennsylvania.

3. The Complainant began receiving gas service at the service address on July 30, 1999. Tr. 8-9.

4. The Complainant is the ratepayer for the service address. Tr. 14, 22.
5. Four people make up the household at the service address—the Complainant, her husband and two adult daughters. Tr. 9, 42.
6. The gross annual income of the Complainant is \$30,000.00. Tr. 9.
7. The Complainant’s one daughter collects social security benefits at \$730.00 per month. Tr. 10-11, 22-23.
8. The Complainant’s other daughter, Jessica Castro, just graduated from Temple University and is employed as a facility manager for Youth Transition Center of the Homeless Shelter in Southwest Philadelphia. Tr. 9, 36.
9. Ms. Jessica Castro’s gross monthly income is approximately \$2,400.00. Tr. 37, 41.
10. The Complainant’s practice when she pays her bills is to pay with a money order—not a check or credit card. Tr. 39.
11. The Complainant’s husband, Richard DeJesus, collects social security benefits at \$730.00 per month. Tr. 10-11, 22-23.
12. The Complainant does not dispute that she owes for gas services rendered, but is confused about the amount owed. Tr. 11.
13. The Complainant was unemployed and did not receive any benefits for the period between November 2012 and October 2013. Tr. 16.
14. On October 2, 2013, the Complainant started working with her current employer. Tr. 23.

15. The Complainant received a May 2017 bill stating she owed an amount significantly more than the \$1,219.66 amount shown as due and owing in the April 2017 letter sent to the service address. Tr. 24-25, Complainant Exhibit 1.

16. Complainant receives all the PGW gas bills for service at the service address. Tr. 24, 34.

17. Tiffany Jones is a Senior Customer Review Officer who has been employed by PGW for over 10 years where she has investigated formal and informal complaints that customers file with the PUC against the Company for the last year and a half. Tr. 45-46.

18. Ms. Jones investigated this Complaint. Tr. 47.

19. There was no payment made to PGW for gas service rendered to the service address between May 1, 2014, and July 31, 2017. Tr. 52, PGW Exhibit 1.

20. The readings of the meter from May 1, 2014, to July 31, 2017, at the service address were actual meter readings, and therefore, the corresponding bills were based on actual meter usage. Tr. 52-53, PGW Exhibit 1.

21. The actual balance due on the Complainant's account for the service address on May 6, 2014, was \$18,128.67. Tr. 53, PGW Exhibit 1.

22. The actual balance due on the Complainant's account for the service address on July 5, 2017, was \$30,648.34. Tr. 54, PGW Exhibit 1.

23. The Complainant's money order was cashed on September 9, 2016. Complainant Exhibit 2.

24. There was no payment to PGW on or about September 9, 2016, from the Complainant for gas service at the service address. Tr. 55-56, 73-74, Complainant Exhibit 2, PGW Exhibit 1.
25. Between April 11, 2013, and May 30, 2017, there is no record of the Complainant contacting the Respondent or requesting a payment arrangement. Tr. 56-57, PGW Exhibit 2.
26. The most recent payment to the account for the service address was a Low Income Home Energy Assistance Program (LIHEAP) payment on January 2, 2014. Tr. 59, 72, PGW Exhibit 2.
27. The last payment received from the Complainant on her gas service account was on April 2, 2010. Tr. 59-60.
28. A shut-off notice was mailed to the Complainant on March 23, 2017, which referenced a past due amount for gas service of \$29,514.28. Tr. 60, PGW Exhibit 3.
29. On April 4, 2017, the Complainant filed an informal complaint with the Commission's BCS. Tr. 61, PGW Exhibit 4.
30. The amount requested to pay for billed gas service at the service address on the bill dated January 5, 2017, is \$28,914.26. Tr. 66, PGW Exhibit 5.
31. The amount requested to pay for billed gas service at the service address on the bill dated February 4, 2017, is \$29,514.28. Tr. 66, PGW Exhibit 5.
32. The amount requested to pay for billed gas service at the service address on the bill dated March 6, 2017, is \$30,095.08. Tr. 66-67, PGW Exhibit 5.

33. The amount requested to pay for billed gas service at the service address on the bill dated April 17, 2017, is \$30,375.21. Tr. 67, PGW Exhibit 5.

34. The amount requested to pay for billed gas service at the service address on the bill dated May 3, 2017, is \$30,515.81. Tr. 67, PGW Exhibit 5.

DISCUSSION

In this Complaint, the Complainant does not deny that she owes Respondent for gas service rendered. Rather, the Complainant disputes the amount owed. The Complainant alleged that the amount owed should be less than what the Respondent contended. The issue in this proceeding is determined by whether the Complainant sustained her burden of proof.

I. Applicable Legal Standard

As the proponent of a rule or order seeking affirmative relief from the Commission, 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. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is 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); *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).

If the Complainant presents 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).

II. What is the Proper Amount Owed for Gas Service

The Complainant offered testimony that she received a letter dated April 4, 2017, from the Respondent with a delinquent balance due on the service address as \$1,219.66. Tr. 12-13, Complainant Exhibit 1. The Complainant then testified that in May 2017 she received a bill for \$29,614.00 for gas service. Tr. 13. The Complainant stated she then spoke with someone from PGW about her service account and was told she had to pay \$6,141.00 to halt termination of her gas service. Tr. 14. The Complainant is very confused about what she is to pay to keep her gas service at her service address. Tr. 14-15.

The Respondent's witness testified that the Complainant's bills in 2017 showed the following for the corresponding months:

Billed Month	Amount Owed
January	\$28,914.26
February	\$29,514.28
March	\$30,095.80
April	\$30,375.51
May	\$30,515.81

Tr. 66-67, PGW Exhibit 5.

The Respondent contends that the Complainant knew what was owed as she received the appropriate amount on her bill every month.

The letter sponsored by the Complainant as one source of confusion for the amount owed is not addressed to the Complainant, but to Richard DeJesus, who is the Complainant's husband. Complainant Exhibit 1. The letter cites to an account number, XXXXXX1716, which is the account number for gas service at the service address. This letter talks about a property lien in the amount of \$1,219.66. The letter states, in pertinent part,

The City of Philadelphia...has filed a municipal lien against your Property. The Lien Amount represents dollars due and owing with respect to the above listed lien Docket Number and does not include obligations for prior lien amounts.

This lien will be marked satisfied only when all prior liens **and** this lien have been paid in full.

Complainant Exhibit 1 (emphasis in original).

The property lien referred to in the letter sponsored by the Complainant is to be added to any other outstanding lien on the property that existed prior to April 4, 2017. While this letter speaks to property liens, it is not to be construed as the outstanding balance owed for gas service rendered to the service address. While the Complainant may have been confused

because the source of the property lien comes from a delinquent balance owed to the Respondent, the letter does not state that the total amount owed for gas service at the service address is \$1,219.66.

The Complainant did not provide any evidence to rebut or refute that she received bills in 2017 that show amounts owed for gas service rendered to the service address other than amounts above \$29,000.00.

Regarding the issue of what is the proper amount owed for gas service at the service address, the record evidence shows that the Complainant's outstanding balance due for gas service rendered as of May 2017 is \$30,515.81.

III. Request for Payment Arrangement

The Complainant requested a payment arrangement. An examination of the Commission's statute, regulations and caselaw considered with the record evidence is to be done to determine if the request for a payment arrangement should be granted.

A. Whether a payment arrangement is warranted

66 Pa.C.S. § 1405(a) states,

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.

The Complainant is a customer of the Respondent. The Respondent is a public utility under the jurisdiction of the Commission.

The record evidence does not show that the Complainant has had a Commission-issued payment arrangement.

In *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (entered December 6, 2007) the Commission clarified subsection 1405(a) of the Code finding that the Commission has authority to establish payment agreements between public utilities and customers but that authority is limited by the restrictions of 1405(b)-(f). In *Crawford*, the Commission concluded that if the customer had not received a prior payment arrangement from it, subsection 1405(a) grants the authority to the Commission to issue a payment arrangement for customers. 66 Pa.C.S. § 1405(a). The Commission stated,

the Commission has a responsibility to exercise its authority very judiciously when a utility has lawfully terminated a customer for non-payment. Specifically, this Commission should exercise discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstance outside of their control.

Crawford, Docket No. C-20066348 (entered December 6, 2007) at 15-16. Hence, the Commission precedent warrants an examination of the Complainant's payment history to determine if a Commission-issued payment arrangement is warranted.

B. Complainant's payment history

The Complainant alleged that from May 2017 up to the scheduled evidentiary hearing date, she only made one payment in the amount of \$100.00. Tr. 15, 30-31. The Complainant alleged that from October 2013 through to May 2017 she was making payments. Tr. 31.

The Complainant's daughter testified that the Complainant paid her bills for gas service at the service address. Tr. 38-39. The Complainant's daughter stated that the Complainant paid her gas bills with money orders. Tr. 39.

The Respondent's witness testified that the last payment received from the Complainant for gas service rendered was on April 2, 2010. Tr. 59-60. The Respondent's witness testified that a LIHEAP payment was received on January 2, 2014, which was the most recent credit to the Complainant's gas service account for the service address. Tr. 72.

The Complainant provided what she purported to be a receipt of payment for gas service at the service address to the Respondent. Complainant Exhibit 1. The receipt is for an amount of \$100.00 on September 6, 2016. The receipt does not show who or what entity it was payable to. The receipt is not stamped or carbon copied or otherwise indicate who or what entity received the \$100.00 funds. In the service account for the Complainant there is no evidence of receipt of funds on or around September 6, 2016. PGW Exhibit 1. The Complainant did not offer any further evidence of payment to the Respondent for gas service rendered.

I do not find the Complainant substantially supported that she regularly paid for gas service rendered at the service address. The Complainant supplied only one purported receipt which does not show that payment was made to the Respondent. While the testimony of the daughter of the Complainant supports that the Complainant regularly paid with money orders, there is no evidence that any money orders were presented to the Respondent and that the Respondent did indeed receive said money orders after April 2010. Tr. 59-60.

Furthermore, the Complainant presented just one document that she represented was a receipt of payment. This document, identified as Complainant Exhibit 2, on its face did not show to whom the funds were payable. Complainant Exhibit 1 was for funds paid on September 9, 2016. Complainant failed to present any other documents to support her testimony that she made regular payments. Even if I found the Complainant's exhibit as reasonable to support payment to the Respondent, said exhibit would only support one payment and not regular payments to the Respondent.

The record evidence does not support that the Complainant made regular payments. Rather, the record evidence shows the Complainant has failed to make payments on her gas service account from February 2014 to May 2017 or over a period of more than three years.

I find the Complainant has not shown a good faith effort to pay her bills for gas service rendered. Based on the record evidence and consistent with *Crawford*, I find that the discretion of the Commission to grant a payment arrangement to the Complainant is not warranted.

CONCLUSIONS OF LAW

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

2. “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).

3. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

4. The Complainant failed to sustain her burden of proof regarding regular payment of gas service bills. 66 Pa.C.S. § 332(a).

5. 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. 66 Pa.C.S. § 1405(a).

6. The Commission should exercise discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (entered December 6, 2007).

7. The Complainant's payment history failed to show a good faith effort to pay her utility bills. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (entered December 6, 2007).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Christine Castro against Philadelphia Gas Works at Docket No. F-2017-2606743 is denied and dismissed.
2. That the Docket No. F-2017-2606743 is to be marked closed.

Dated: September 27, 2017

/s/
Angela T. Jones
Administrative Law Judge