

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cynthia Smith	:	
	:	
v.	:	F-2017-2632911
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Cynthia Smith’s formal Complaint against Philadelphia Gas Works at Docket No. F-2017-2632911 because she failed to carry the burden of proving that: 1) her gas bills are incorrect and abnormally high, and 2) she qualifies for a subsequent Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On October 30, 2017, Cynthia Smith (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) alleging that she is unable to pay her gas bills and challenging the accuracy of her gas meter. As relief, Ms. Smith requested a revision of her gas bills as well as an affordable payment arrangement.

The Complaint was filed as a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision, at BCS Case No. 3567121.

On November 28, 2017, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated December 15, 2017 notified the parties that an initial hearing was scheduled as part of the morning session of a call of the docket hearing on Thursday, February 15, 2018, at 9:30 a.m.

A Prehearing Order was issued on January 16, 2018, 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 February 15, 2018. The Complainant appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of Adrian Pinkney, a Customer Review Officer for PGW in charge of investigating formal and informal customer complaints filed with the Commission against PGW. The Respondent sponsored four exhibits, which were admitted into the record.

The record was closed upon receipt of my copy of the transcript on March 22, 2018.

FINDINGS OF FACT

1. The Complainant in this proceeding is Cynthia Smith, who resides at 1617 Elaine Street, 2nd Floor, Philadelphia, PA 19150 (Service Address). Tr. 6.

2. The Respondent in this proceeding is Philadelphia Gas Works.

a) High billing dispute

3. Ms. Smith has resided at the Service Address for approximately five years. Tr. 16, 22.

4. On November 28, 2016, PGW visited the Service Address and issued a hazard tag for the gas heater serving the Service Address because the heater was malfunctioning. Tr. 34, 35.

5. On or about September 28, 2017, PGW terminated Ms. Smith's gas service at the Service Address for nonpayment. PGW Exhibits 1 and 3.

6. On October 2, 2017, Ms. Smith filed an informal complaint with BCS, at BCS Case No. 3567121 disputing the accuracy of her gas meter. Tr. 31, PGW Exhibit 3.

7. On October 10, 2017, BCS orally informed Ms. Smith that her informal complaint at BCS Case No. 3567121 was dismissed pursuant to 66 Pa.C.S. §§ 1405 (c) and (d) and instructed her to contact PGW in order to arrange for the removal and testing of her gas meter. Tr. 32, PGW Exhibit 3.

8. On or about October 12, 2017, PGW reconnected Ms. Smith's gas service after receiving a payment of \$850.00 from her on October 6, 2017. See Tr. 9, PGW Exhibit 1, pp. 2 and 4.

9. PGW removed Ms. Smith's gas meter (Meter # 1664557) sometime between January 26, 2018 and February 10, 2018. PGW Exhibit 1 and 4.

10. On February 13, 2018, PGW tested Meter # 1664557 for accuracy. PGW Exhibit 4.

11. Meter # 1664557 tested accurate within the 2% margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. Tr. 33, GW Exhibit 4.

12. Ms. Smith made no payments towards her gas account with PGW during the period November 22, 2014 to October 29, 2015. PGW Exhibit 1.

13. Ms. Smith made one payment of \$337.12 on October 30, 2015. PGW Exhibit 1.

14. Ms. Smith made no payments towards her gas account with PGW during the period October 31, 2015 to August 29, 2017. PGW Exhibit 1.

15. During the period from August 29, 2017 through February 14, 2018, Ms. Smith made five payments for a total of \$2,563.72 towards her account with PGW. PGW Exhibit 1.

16. As of the day of the hearing, Ms. Smith's outstanding balance with PGW was \$6,979.00. Tr. 26-27, PGW Exhibit 1.

17. Ms. Smith's gas usage after October of 2017 is in step with her usage in previous years:

Date	CCFs Usage	HDD		Date	CCF Usage	HDD
11/22/2014	88	456		11/23/2015	33	170
12/23/2014	81	759		12/22/2015	129	504
1/27/2015	126	961		1/26/2016	192	878

Date	CCFs Usage	HDD		Date	CCF Usage	HDD
11/22/2016	46	393		11/22/2017	89	406
12/22/2016	107	729		12/26/2017	155	712
1/26/2017	186	893		1/26/2018	214	1182

PGW Exhibit 1.

b) Payment arrangement request

18. Ms. Smith works in a nursing home at a pay rate of \$18.00 per hour, working 54 hours every two weeks. Tr. 17, 20-21.

19. Ms. Smith's gross household income is \$2,106.00 per month. Tr. 16, 29

20. As of the day of the hearing, Ms. Smith was the sole occupant of the Service Address. Tr. 16, 30.

21. On August 29, 2016, Ms. Smith filed an informal complaint with BCS at BCS Case No. 3472108 alleging her inability to pay her gas bills and requesting a payment arrangement. Tr. 28-29, PGW Exhibit 2 and 3.

22. At the time of the filing of BCS Case No. 3472108, Ms. Smith reported to BCS that her household consisted of two individuals and that her gross household income was \$317.00 per month. Tr. 29, PGW Exhibit 3.

23. On December 27, 2016, BCS established a payment arrangement on behalf of Ms. Smith upon determining that she was a level 1 income customer. Tr. 28-29, PGW Exhibit 3.

24. The payment arrangement established by BCS on December 27, 2016, required Ms. Smith to make monthly payments of \$243.00, consisting of a regular budget bill amount of \$119.00 per month, plus \$124.00 per month towards arrearages. *Id.*

25. On March 24, 2017, Ms. Smith defaulted on the payment arrangement issued by the Commission's BCS. Tr. 28-29, PGW Exhibits 2 and 3.

DISCUSSION

In her formal Complaint, Ms. Smith alleged that she is unable to pay her gas bills and challenged the accuracy of her gas meter. As relief, Ms. Smith requested a revision of her gas bills as well as an affordable payment arrangement.

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, vacated on other grounds by, 666 A.2d 744 (Pa. Cmwlth. 1995). (*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).

a) 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 *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. *See Thomas*

v. PECO Energy Company, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011).

At the evidentiary hearing, Ms. Smith testified that she has resided at the Service Address for approximately five years. Tr. 16, 22. She explained that during this period of time, her gas heater was frequently malfunctioning or nonoperational. Tr. 12. Because she “went months without heat,” Ms. Smith challenged the accuracy of her gas bills and the outstanding balance accumulated in her account with PGW. Tr. 12.

Ms. Smith testified that PGW was aware of her heating problems, having visited the Service Address in November of 2016 and again in October of 2017. In particular, she explained that in November of 2016, PGW turned off her gas heater upon finding that it was malfunctioning. In addition, on or about October of 2017, Ms. Smith contacted PGW’s unit responsible for its Parts and Labor Plan and reported that the house heater serving the Service Address was not working properly. Tr. 19-20. Following Ms. Smith’s call, PGW representatives visited the Service Address and turned off the gas house heater. Tr. 19-20. Ms. Smith testified that after PGW turned off her gas heater at the Service Address, she moved in with her daughter until November of 2017, when her landlord repaired the heater. Tr. 20.

PGW’s witness, Adrian Pinkney, confirmed Ms. Smith’s testimony with regard to PGW’s visit to the Service Address in November of 2016. In particular, Ms. Pinkney testified that on November 28, 2016, PGW visited the Service Address and issued a hazard tag for the gas heater serving the Service Address because the heater was malfunctioning. Tr. 34, 35. However, the Respondent has no record of visiting the Service Address again on or about October of 2017, to turn off the gas heater due to its malfunctioning. Tr. 34, 36.

Instead, Ms. Pinkney sponsored exhibits which show that on or about September 28, 2017, PGW terminated Ms. Smith’s gas service at the Service Address for nonpayment. PGW Exhibits 1 and 3. Ms. Pinkney testified that on October 2, 2017, Ms. Smith filed an informal complaint with BCS, at BCS Case No. 3567121 disputing the accuracy of her gas meter. Tr. 31, PGW Exhibit 3. On October 10, 2017, BCS orally informed Ms. Smith that

her informal complaint at BCS Case No. 3567121 was dismissed and instructed her to contact PGW in order to arrange for the removal and testing of her gas meter. Tr. 32, PGW Exhibit 3. On or about October 12, 2017, PGW reconnected Ms. Smith's gas service upon receiving a payment of \$850.00 from her on October 6, 2017. See Tr. 9, PGW Exhibit 1, pp. 2 and 4.

On October 30, 2017, Ms. Smith filed the present Complaint as a timely appeal of the BCS decision, at BCS Case No. 3567121. Ms. Pinkney explained that in preparation for the hearing in this matter, PGW removed Ms. Smith's gas meter (Meter # 1664557) and tested it for accuracy. PGW Exhibit 1 and 4. Meter # 1664557 tested accurate within the 2% margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. Tr. 33, PGW Exhibit 4.

As of the day of the hearing, Ms. Smith's outstanding balance with PGW was \$6,979.00. Tr. 26-27, PGW Exhibit 1. Ms. Pinkney testified that Ms. Smith's account balance has resulted from an accumulation of unpaid or partially paid bills and late charges over the years. Tr. 28, PGW Exhibit 1. Ms. Smith's account history shows that she made no payments towards her gas account with PGW during the period November 22, 2014 to October 29, 2015. PGW Exhibit 1. Ms. Smith made one payment of \$337.12 on October 30, 2015, then proceeded to make no payments until August 29, 2017. PGW Exhibit 1. By then, her outstanding balance with PGW amounted to \$9,047.30. PGW Exhibit 1.

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 bills from PGW are incorrect and abnormally high. While it is undisputed that PGW visited the Service Address and turned off the Complainant's gas heater due to hazardous conditions on November 28, 2016, Ms. Smith failed to provide any information as to when the heater was turned on after the landlord had it repaired. See Tr. 36. In addition, Ms. Pinkney's testimony regarding the number of service-related visits to the Service Address rebutted Ms. Smith's testimony concerning PGW's second visit in or about October 2017 to turn off her gas heater again due to malfunctioning. Tr. 34, 36. Furthermore, Ms. Smith failed to rebut Ms. Pinkney's testimony with additional evidence in support of her high billing claims. In fact, Ms. Smith's usage history following October of 2017,

when she claims that her gas heater was turned off by PGW due to safety reasons, belies her claims and is in step with her usage in previous years.

Date	CCFs Usage	HDD		Date	CCF Usage	HDD
11/22/2014	88	456		11/23/2015	33	170
12/23/2014	81	759		12/22/2015	129	504
1/27/2015	126	961		1/26/2016	192	878

Date	CCFs Usage	HDD		Date	CCF Usage	HDD
11/22/2016	46	393		11/22/2017	89	406
12/22/2016	107	729		12/26/2017	155	712
1/26/2017	186	893		1/26/2018	214	1182

PGW Exhibit 1.

Consequently, Ms. Smith’s claim of high or incorrect billing is denied.

b) Payment Arrangement

At the hearing, Ms. Smith testified that she resides at the Service Address by herself. Tr. 16, 30. She explained that she works in a nursing home at a pay rate of \$18.00 per hour, working 54 hours every two weeks. Tr. 17, 20-21.

In response, Ms. Pinkney testified that on August 29, 2016, Ms. Smith filed an informal complainant with BCS at BCS Case No. 3472108, alleging her inability to pay her gas bills and requesting a payment arrangement. Tr. 28-29, PGW Exhibit 2 and 3. At the time, Ms. Smith reported to BCS that her household consisted of two individuals and that her gross household income was \$317.00 per month. Tr. 29, PGW Exhibit 3. On December 27, 2016, BCS established a payment arrangement on behalf of Ms. Smith upon determining that she was a

level 1 income customer. Tr. 28-29, PGW Exhibit 3. The Commission-issued payment arrangement required Ms. Smith to make monthly payments of \$243.00, consisting of a regular budget bill amount of \$119.00 per month, plus \$124.00 per month towards arrearages. *Id.* On March 24, 2017, Ms. Smith defaulted on the payment arrangement issued by the Commission. Tr. 28-29, PGW Exhibits 2 and 3. As of the day of the hearing, Ms. Smith's outstanding balance with PGW was \$6,979.00. Tr. 26-27, PGW Exhibit 1.

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. 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) (emphasis added).

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. Furthermore, section 1403 defines "change in income" as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403.

Ms. Smith has already received and defaulted on one Commission-issued payment arrangement. Ms. Smith's gross household income of \$2,106.00 per month (FOF # 19) represents an increase, instead of a decrease, from the income she reported to BCS in August of 2016. In addition, the number of the household members has decreased from two, reported to BCS in August of 2016, to one, reported on the day of the hearing.

After carefully reviewing the record in this matter, I find that the Complainant has failed to carry her burden of proving that she has experienced a decrease in income that satisfies the definition of a "change in income" pursuant to 66 Pa.C.S. §§ 1403 and 1405(d). Consequently, the Commission lacks the authority to issue a subsequent payment arrangement for the Complainant.

For the reasons stated above, Ms. Smith's present Complaint against PGW is dismissed in its entirety.

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).

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

6. 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. 66 Pa.C.S. § 1405(d).

7. Change in income is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level. 66 Pa.C.S. § 1403.

8. Household income is defined as the 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 the Formal Complaint filed by Cynthia Smith against Philadelphia Gas Works at Docket No. F-2017-2632911 is dismissed in its entirety.

2. That the Secretary mark this docket closed.

Date: June 13, 2018

_____/s/
Eranda Vero
Administrative Law Judge