

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yvette Small	:	
	:	
v.	:	F-2018-3000910
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This decision finds that the Complainant failed to sustain her burden of proof regarding her claims of incorrectly billed charges. Therefore, this decision dismisses the formal Complaint (Complaint).

HISTORY OF THE PROCEEDING

On March 13, 2018, Yvette Small (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (PUC or Commission) against Philadelphia Gas Works (PGW or Respondent or Company). The Complainant indicated that there are incorrect charges on her bill.

The Complainant further alleged that she was overcharged for gas service which she alleged she paid online. The Complainant admitted that she later cancelled a payment because she could not afford it. The Complainant contended that she only owes \$109.00.

The Complaint was served electronically (eService) by the Commission's Secretary on April 3, 2018, per 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.

Counsel for the Respondent, Graciela Christlieb, Esquire, filed an Answer on April 23, 2018. The Answer denied the allegations of the Complaint and averred that the Company did not overcharge the Complainant. The Respondent averred that a check was returned for insufficient funds and a charge for insufficient funds was applied to the Complainant's account.

The Answer further avers that the Complainant filed an informal complaint regarding this matter with the Commission's Bureau of Consumer Services (BCS) at Case No. 3572604. The BCS found that the Complainant's informal complaint was dismissed regarding the returned check. The BCS also found that the insufficient funds charge to the Complainant's account should be waived and on February 14, 2018, the Respondent waived the insufficient funds charge in compliance with the BCS decision. This Complaint is a timely appeal of the BCS decision.

The Respondent requested that the Commission dismiss the Complaint.

By Hearing Notice dated April 26, 2018, the matter was scheduled for an initial hearing on Friday, June 1, 2018, at 10:00 a.m. The matter was assigned to the undersigned Administrative Law Judge (ALJ), Angela T. Jones.

By Prehearing Order dated April 26, 2018, the undersigned provided, among other things, the procedural rules for this proceeding.

The initial hearing convened as scheduled on June 1, 2018. Yvette Small was present and represented herself. Counsel for the Respondent, Attorney Christlieb, was present and was accompanied by one witness, Tiffany Jones.

Ms. Small testified and did not sponsor any exhibits.

The Respondent's witness sponsored the following six exhibits:

- (1) PGW Exhibit 1 – contacts at the premise;
- (2) PGW Exhibit 2 – customer online and payment activity;
- (3) PGW Exhibit 3 – PGW refund check to Complainant;
- (4) PGW Exhibit 4 – account statement of Complainant;
- (5) PGW Exhibit 5 – PGW letter in response to payment dispute; and
- (6) PGW Exhibit 6 – BCS Case No. 3572604 case report.

All six PGW exhibits were admitted into the record over the Complainant's objection to the pay date shown on PGW Exhibit 2.

The entire transcript was received on June 25, 2018 and consisted of 93 pages of transcribed testimony. The record closed on June 25, 2018, when the transcript was received.

This matter is now ripe for decision.

FINDINGS OF FACT

1. The Complainant is Yvette Small, who currently resides at 2259 North Uber Street, Philadelphia, PA (service address). Tr. 6.
2. The Respondent is PGW which provides gas service to the Complainant at the service address.
3. The Complainant is enrolled in the Company's Customer Responsibility Program (CRP) and under the program is responsible to pay \$109.98 per month for gas service. Tr. 24-25, PGW Exhibit 4.
4. The Complainant missed a couple of monthly payments and had late payments while she was enrolled in the CRP program. Tr. 25-26, 35, 42.

5. The Complainant's bill is generated in the same amount monthly regardless of usage because the bill is based on the income of the CRP participant. Tr. 42, 79-80.

6. Tiffany Jones is employed by PGW as a Senior Customer Review Officer who investigates informal and formal complaints filed against the Company with the PUC. Tr. 45-46.

7. Ms. Jones investigated the Complainant's Complaint. Tr. 46.

8. The Complainant receives her PGW bill in the mail. Tr. 13.

9. The Complainant has a username and password to access the PGW payment website. Tr. 37.

10. No one other than the Complainant has her password to the PGW payment website. Tr. 37.

11. The Complainant is the only person that pays her PGW bills. Tr. 37.

12. The Complainant normally pays her bills online through PGW's website. Tr. 8, 35.

13. The PGW website automatically shows the amount due for gas service rendered associated with the Complainant's account when the Complainant accesses her account online. Tr. 13.

14. On June 22, 2017, a bill was issued to the Complainant's account, which was due on July 14, 2017, in the amount of \$459.94 based on past due CRP payments. Tr. 80, PGW Exhibit 4.

15. On June 22, 2017, the Complainant enrolled in autopay on the PGW website. Tr. 48, 56, 64, PGW Exhibit 2.

16. By enrolling in autopay, the Complainant scheduled a payment for the full amount of the June 2017 bill to be made on the due date of the bill, July 14, 2017. Tr. 64.

17. On June 23, 2017, the Complainant scheduled a one-time payment in the amount of \$459.94 to be paid on July 14, 2017. Tr. 7, 35, 48, 56, PGW Exhibit 2.

18. On June 24, 2017, PGW's website generated a payment for the amount due for the June 2017 bill through the autopay feature. Tr. 48-49, 57, PGW Exhibit 2.

19. On July 6, 2017, the Complainant cancelled the autopay feature. Tr. 11-12, 35, 50, 57, PGW Exhibit 2.

20. The scheduled autopay payment was cancelled upon cancellation of the autopay feature. Tr. 50.

21. A confirmation code was generated for the cancellation of the autopay scheduled payment. Tr. 50.

22. When a transaction is cancelled or modified on the PGW website, an email is generated within 24 hours to confirm the cancellation. Tr. 19-21, 28-29.

23. With another transaction on July 6, 2017, the Complainant scheduled a one-time payment in the amount of \$359.94 to be paid on July 14, 2017. Tr. 50, 57-58, PGW Exhibit 2.

24. Through this second transaction on July 6, 2017, the Complainant intended to cancel the \$459.94 payment that she had previously scheduled for the payment due date.

25. The Complainant did not receive an email to confirm that her \$459.94 payment was cancelled. Tr. 19, 21, 28-29.

26. On July 14, 2017, both payments scheduled for this date in the amounts of \$459.94 and \$359.94, scheduled by the Complainant on June 23, 2017 and July 6, 2017, respectively, were executed and posted to the Complainant's bank account. Tr. 50-51, 61-62, 80-81, PGW Exhibits 2 and 4.

27. The Complainant received an overdraft notice on her bank account after the July 14, 2017, payments because the bank debited both the \$459.54 and \$359.54 payments to PGW. Tr. 14-15.

28. Seeing the overdraft notice on her bank account caused the Complainant to call her bank regarding the \$459.54 payment to PGW. Tr. 39.

29. After the Complainant spoke to her bank about the overdraft notice, on July 17, 2017, she called PGW to obtain an explanation of why they presented to her bank two payments. Tr. 16.

30. The response the Complainant received from PGW was that the \$459.54 payment was never cancelled, so that payment was processed. Tr. 17.

31. The Complainant disagreed with PGW and contended that the \$459.54 payment was cancelled and should not have been processed. Tr. 17-18.

32. On July 17, 2017, during a call initiated by the Complainant, the Respondent told the Complainant that she could either wait for a refund check or she could contact her bank to cancel the payment that was posted. Tr. 51, 65-66, PGW Exhibit 1.

33. The Complainant called Respondent back on July 17, 2017 and gave the confirmation code that corresponded to cancelling autopay. Tr. 51, 66, PGW Exhibit 1.

34. The confirmation code was emailed to the Complainant at the email address that corresponds to the Complainant's account on the PGW payment website. Tr. 67.

35. On July 18, 2017, the Complainant again called the Respondent requesting a refund and was told she could receive a refund in the amount of \$359.94. Tr. 51, 68, PGW Exhibit 1.

36. The Complainant disputed the refund amount, contended it should be \$459.94, and requested to speak with a supervisor. Tr. 51-52, 68-69, PGW Exhibit 1.

37. A PGW supervisor confirmed that the refund amount was \$359.94 because the Complainant owed \$459.94 and made two payments, one for \$459.94 and one for \$359.94; thus, the refund due was \$359.94. Tr. 69, PGW Exhibit 1.

38. On July 19, 2017, PGW's Account Management Department approved a refund to be issued in 10 business days. Tr. 52, 70, PGW Exhibit 1.

39. On July 25, 2017, the Complainant's July 2017, bill was issued and automatically paid with the credit amount on her account, leaving a credit amount of \$249.96 ($\359.94 (June credit) - $\$109.98$ (CRP amount due for July 2017) = $\$249.96$). Tr. 52, 53-54, 82, PGW Exhibit 4.

40. The Complainant had a \$4.39 credit from an older service account, and therefore, her total credit was \$254.35 ($\249.96 (June credit) + $\$4.39$ (older service account credit) = $\$254.35$). Tr. 52, 82-83, PGW Exhibit 4.

41. On July 31, 2017, the Respondent issued to the Complainant a refund check in the amount of \$254.35. Tr. 22-24, 31, 40, 70, PGW Exhibits 1, 3 and 4.

42. The refund check, in the amount of \$254.35, issued on July 31, 2017, was processed prior to the Respondent finding out that the authorization for payment in the amount of \$459.94 was revoked by the Complainant. Tr. 76, PGW Exhibits 4 and 5.

43. On August 3, 2017, the payment of \$459.94 was returned by the Complainant's bank because the Complainant revoked its authorization. Tr. 52, 62, 83-84, PGW Exhibits 4 and 5.

44. On August 7, 2017, the Complainant deposited the \$254.35 PGW check that she received into her bank account. Tr. 31, 40, PGW Exhibit 3.

45. On August 22, 2017, a bill was generated on the Complainant's account in the amount of \$109.98 with an outstanding balance due in the amount of \$589.92 (\$459.94 (payment that was revoked) + 109.98 (CRP monthly amount due) + \$20.00 (for insufficient funds charge) = \$589.92). Tr. 84, PGW Exhibit 4.

46. On September 1, 2017, the Complainant called the Respondent regarding a shut-off notice received for September 6, 2017. Tr. 72, PGW Exhibit 1.

47. On September 1, 2017, the Respondent explained to the Complainant that she stopped the payment in the amount of \$459.94 after it was processed. Tr. 73, PGW Exhibit 1.

48. On September 1, 2017, the Respondent explained that because the Complainant requested a refund check, the credit was not applied to her account, but was presented to her as a check. Tr. 73, PGW Exhibit 1.

49. The Respondent normally does not issue refunds in the form of a check to customers with active accounts if it is not requested. Tr. 74.

50. On October 24, 2017, the Complainant filed an informal complaint with the Commission's BCS over the allegations concerning the \$459.94 and \$359.94 payments. Tr. 86-87, PGW Exhibit 6.

51. On February 12, 2018, the BCS issued a decision which directed the Respondent to credit the Complainant's account in the amount of \$20.00 to waive the insufficient funds charge and in all other respects dismissed the complaint. Tr. 87-88, PGW Exhibit 6.

52. The \$20.00 insufficient funds charge was removed from the Complainant's account on February 14, 2018. Tr. 84-85, PGW Exhibit 4.

DISCUSSION

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*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa.Cmwlth. 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*, 413 A.2d 1037 (Pa.Cmwlth. 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 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*, 461 A.2d 1234 (Pa. 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. Whether Charges Are Incorrect

There is no dispute that the Complainant is the responsible ratepayer for gas service at the service address. Tr. 37. The Complainant normally pays her bills online through the Respondent's website. There is no dispute that the Complainant is a participant in the Respondent's CRP. Tr. 24-25. There is no dispute that the Complainant's monthly amount billed is \$109.98 as a CRP participant. *Id.* There is no dispute that the Complainant did not always timely pay her CRP bills. Tr. 25-26, 35, 42, PGW Exhibit 4. There is no dispute that the Complainant is the only person that pays her bills and the only person with access to her username and password to the website that enables her to pay her bills. Tr. 37. What is disputed is whether the Respondent accounted appropriately for the transactions that the Complainant designated as payments through the Respondent's website.

The Complainant contended that she made two separate transactions, one on June 23, 2017, in the amount of \$459.94 and another on July 6, 2017 in the amount of \$359.94 for payment of her bill due on July 14, 2017. Tr. 9-12. There is no dispute that the full amount of the bill for the July 14, 2017, due date was \$459.94. Tr. 9, PGW Exhibit 4. The Complainant contended that she accessed the Respondent's electronic bill payer system before July 14, 2017 and cancelled the scheduled payment for the full amount because she determined her finances were such that paying the full amount would present a burden to her. Tr. 11-12. However, the Complainant was willing to pay \$359.94 or \$100.00 less than the full amount due for the July 14, 2017, payment. The Complainant does not recall invoking autopay for the full amount due on July 14, 2017. Tr. 35-36.

The Respondent contended that the Complainant on June 22, 2017, implemented autopay for the full amount due on July 14, 2017. The Respondent confirms that the Complainant had a transaction in the amount of \$459.94 on June 23, 2017 for payment due on July 14, 2017. PGW Exhibit 1 and 4. The Respondent provided evidence that the Complainant invoked a second transaction on July 6, 2017, for the amount of \$359.94 due on July 14, 2017, or \$100.00 less than the full amount due. The Respondent provided evidence that the Complainant reviewed her account on July 6, 2017 and cancelled the autopay payment on that date. PGW Exhibit 2. The Complainant failed to rebut this evidence.

The Respondent presented to the Complainant's bank two transactions for payment on July 14, 2017, in the amounts of \$459.94 and \$359.94. Most telling is that the Complainant did not recall receiving a confirmation email cancelling the \$459.94 payment that she made. Tr. 19, 21, 28-29. However, the Complainant did present a confirmation email cancelling the autopay payment in the amount of \$459.94. Tr. 30, PGW Exhibit 1.

Based on the record evidence presented, I find that the Complainant's actions through Respondent's website caused two payments in the amounts of \$459.94 and \$359.94 to be rendered on the due date of July 14, 2017, for the Complainant's June 2017, bill for gas service. Furthermore, I do not find that the presentation of these two payments in the amounts of \$459.94 and \$359.94 by the Respondent to the Complainant's bank were in error.

On July 25, 2017, the Complainant's bill for July 2017, became due in the amount of 109.98 (CRP monthly payment). PGW Exhibit 4. The Respondent took the credit of the Complainant's account in the amount of \$359.94 and added a credit in the amount of \$4.39 from an older service account for a total of \$364.33 (\$359.94 (credit from June bill overpayment) + \$4.39 (credit from older service account) = \$364.33). Tr. 52. The Respondent deducted the amount due for July 2017, for a refund due to the Complainant in the amount of \$254.35 (\$364.33 - 109.98 = \$254.35). Tr. 52, PGW Exhibits 1 and 3.

On July 31, 2017, the Respondent mailed a check to the Complainant in the amount of \$254.35 because the Complainant requested a refund in the form of a check. PGW Exhibits 1, 3 and 5.

There is no dispute that the Complainant stopped the one payment in the amount of \$459.94. Tr. 14-18, 52, 61, PGW Exhibit 4. On August 3, 2017, the Complainant's bank revoked the payment in the amount of \$459.94 to the Respondent because the Complainant told the bank the payment was not authorized. Tr. 18, PGW Exhibits 4 and 5. Because the payment had already been credited to the Complainant's account, the Complainant then owed \$459.94 on August 3, 2017. PGW Exhibit 4.

On August 22, 2017, the Complainant received a bill for service rendered in August 2017. PGW Exhibit 4. The Complainant also was charged \$20.00 for insufficient funds in August 2017, because of the stopped payment on August 3, 2017, from the Complainant's bank. PGW Exhibit 4. The Complainant's total balance due for her August 2017, bill was \$589.92 (\$109.98 (monthly CRP) + \$459.94 (amount due because of stopped payment) + \$20.00 (insufficient funds charge) = \$589.92). PGW Exhibit 4.

I find that the Respondent billed the Complainant accurately for service to her service address. The Complainant provided no evidence that the charges by the Respondent were unreasonable or inappropriate. There is no record evidence to support the Complainant's allegation that she had incorrect charges for billed service. I find that the Complainant failed to support her burden to prove there were incorrect charges billed for her gas service.

The Complainant has failed to support her burden of proof. The Complaint will be dismissed by the ordering paragraphs below.

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 to prove incorrect charges on her bills at her service address.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Yvette Small against Philadelphia Gas Works at Docket No. F-2018-3000910 is dismissed.

