

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Cindy Morales	:	
	:	
v.	:	C-2018-2641198
	:	
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 claim of incorrectly billed charges, high bills and a request for a payment arrangement. Therefore, this decision dismisses the formal Complaint (Complaint).

HISTORY OF THE PROCEEDING

On January 4, 2018, Cindy Morales (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 she would like a payment arrangement and alleged that there are incorrect charges on her bill. The Complainant alleged that due to a fire at her house in October 2015, the windows were broken, and her gas bill was very high. Because it was the beginning of winter, the Complainant left her house but did not turn off her heat for fear of her pipes freezing. The Complainant requested help with her bills.

The Complaint was served electronically (eService) by the Commission's Secretary on January 5, 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 January 25, 2018. The Answer denied the allegation that the Complainant was charged incorrectly for gas service at 4626 Tampa Street, Philadelphia, PA (service address). The Respondent averred that two terminations of service occurred in 2016 for non-payment and for both service was restored with medical certifications. The Respondent averred that, on June 27, 2017, the Complainant's service was terminated for non-payment.

The Respondent further averred in its Answer that, on November 8, 2017, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 3576390. By decision on November 13, 2017, BCS dismissed the informal complaint. The BCS decision found that the Complainant did not dispute her bill prior to filing the informal complaint and that her balance includes customer assistance program (CAP) arrears, which by statute prohibits the Commission from issuing a payment arrangement. This Complaint is not a timely appeal of the BCS decision.

The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice dated February 2, 2018, this matter was scheduled for an initial hearing on Thursday, March 29, 2018, at 10:00 a.m. The matter was assigned to the undersigned Administrative Law Judge (ALJ), Angela T. Jones.

By Prehearing Order dated February 1, 2018, the undersigned provided, among other instructions, the procedural rules for this proceeding.

The initial hearing convened as scheduled on March 29, 2018. Cindy Morales was present and represented herself. Counsel for the Respondent, Attorney Christlieb, was present and was accompanied by one potential witness. After discussions among the parties, it was agreed that the Complainant would amend her Complaint to include a high bill allegation and the Respondent was directed to test the meter at the service address. The undersigned issued an Order dated March 30, 2018, which provided the direction that was agreed to at the initial hearing and ordered that a further hearing date be set.

By Hearing Notice dated April 3, 2018, a further hearing was scheduled for Tuesday, June 5, 2018, at 10:00 a.m.

The further hearing convened as scheduled. The Complainant appeared and again represented herself. The Respondent was represented by Attorney Christlieb who was accompanied by one witness, Jennifer Pearson.

Ms. Morales testified and did not sponsor any exhibits.

The Respondent's witness sponsored the following five exhibits:

- (1) PGW Exhibit 1 – Complainant's service account;
- (2) PGW Exhibit 2 – Complainant's payment agreement history;
- (3) PGW Exhibit 3 – PGW history of usage at service address;
- (4) PGW Exhibit 4 – meter test data; and
- (5) PGW Exhibit 5 – BCS Case No. 3576390 decision.

All five PGW exhibits were admitted into the record without objection from the Complainant.

The entire transcript was received on July 20, 2018 and consisted of 56 pages of transcribed testimony. The record closed on July 20, 2018, when the undersigned ALJ received the transcript.

This matter is now ripe for decision.

FINDINGS OF FACT

1. The Complainant is Cindy Morales, who owns and currently resides at 4626 Tampa Street, Philadelphia, PA. Tr. 19.

2. The Respondent is PGW which provides gas service to the Complainant at the service address.

3. The service address is a row home with three bedrooms and the Complainant is the sole occupant. Tr. 19.

4. The Complainant's monthly gross income is \$750.00 from social security assistance. Tr. 20.

5. The service address has the following three gas appliances:

- 1) stove;
- 2) house heater; and
- 3) water heater.

Tr. 20-21.

6. The Complainant had a fire at the service address in September 2015, and the fire department that responded broke the windows to the house. Tr. 22.

7. The Complainant lived at the service address while the windows of the house were broken. Tr. 22

8. The Complainant had wood panels put up in the spaces where the windows were broken at the service address. Tr. 27.

9. From December 2017, to January 2018, the Complainant had the windows of the service address repaired and replaced. Tr. 22.

10. The Complainant kept the heat on during the time the windows to the service address were broken so that her pipes would not freeze. Tr. 8, 25.

11. The Complainant's gas service was terminated in July 2017, and therefore, the Complainant left the service address at that time and went to Puerto Rico. Tr. 26, 28-29.

12. The Complainant came back from Puerto Rico to the service address in November 2017. Tr. 26.

13. The service address was unoccupied from July 2017 to November 2017, because the Complainant was in Puerto Rico over this time frame. Tr. 28.

14. On January 3, 2018, the Complainant received a CRISIS grant in the amount of \$307.91 to have her gas service turned back on and currently has gas service. Tr. 29-30, 37-38, PGW Exhibit 1.

15. Jennifer Pearson is employed by the Respondent as a customer review officer and she investigated this Complaint for PGW. Tr. 33-34.

16. The Complainant's outstanding balance as of June 1, 2018 was \$5,516.29. Tr. 36, PGW Exhibit 1.

17. Over the time period from January 2015, to June 1, 2018, the Complainant made two payments for gas service on April 23, 2018, and May 22, 2018, in the amounts of \$40.00 and \$30.00, respectively. Tr. 37-38, PGW Exhibit 1.

18. The Complainant has had three LIHEAP¹ grants which were received on March 23, 2016, July 6, 2016, and January 4, 2017, in the amounts of \$278.00, \$65.00, and \$258.00, respectively. Tr. 38, PGW Exhibit 1.

¹ LIHEAP stands for Low Income Home Energy Assistance Program.

19. The Complainant has had one payment arrangement, which was issued by the Respondent on December 13, 2017, and was broken on February 21, 2018. Tr. 21, 39, PGW Exhibit 2.

20. The Complainant was enrolled in the Company's Customer Responsibility Program (CRP), but her participation in the program was suspended on July 29, 2015 because of non-payment. Tr. 39, PGW Exhibit 2.

21. When the Complainant defaulted on the CRP agreement her balance was \$759.70. Tr. 40.

22. The Complainant has had service restored twice with the restoration fee in the amount of \$123.23 for a total amount of \$246.46 ($\$123.23 \times 2 = \246.46) for restoration charges. Tr. 40.

23. The total amount of charges for CRP arrears is \$1,006.16 ($\$759.70 + \$246.46 = \$1,006.16$). Tr. 40.

24. The total amount paid on the Complainant's service account is \$978.91 [$\$40.00 + \30.00 (see FOF 17) + $\$307.91$ (see FOF 14) + $\$278.00 + \$65.00 + 258.00$ (see FOF 18) = $\$978.91$]. Tr. 40.²

25. The Complainant's CRP arrearage is \$27.25 ($\$1,006.16 - \$978.91 = \27.25). Tr. 39-40.

26. The meter at the Complainant's service address was tested on April 16, 2018, at 0.7% accuracy. Tr. 42-45, PGW Exhibits 3, 4.

² The witness testified that the total amount paid on behalf of the Complainant is \$908.41. The record shows the figure is \$978.91.

27. The Complainant’s gas usage from March 2015 to March 2018 is as follows:

Period	Meter Readings		No. of Days	Usage (ccf) ³	Heat Usage	No. Degree Days	CFDD ⁴
	From	To					
3/18/15 – 3/17/16	1553	2572	365	1019	942	3589	26.3
3/17/16 – 3/20/17	2572	3792	368	1220	1143	3984	28.7
3/20/17 – 3/20/18	3792	4665	365	873	796	4216	18.9

Tr. 42-43, PGW Exhibit 3.

28. The Complainant filed an informal complaint with BCS on November 8, 2017, requesting a payment arrangement. Tr. 44, PGW Exhibit 5.

29. BCS concluded by written decision that it could not grant the Complainant a payment arrangement because her balance included customer assistance program arrears, and therefore, the Commission is prohibited by statute to implement a payment agreement. Tr. 44-45, PGW Exhibit 5.

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

³ Hundred cubic feet.

⁴ CFDD = Cubic feet of gas used per degree day.

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. Alleged High Bill

The Complainant alleged that her gas bills were high.

In *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980) (“*Waldron*”), the Commission explained the process of meeting the burden of proof regarding a high bill complaint. Pursuant to *Waldron*, the complainant has the burden to put forth evidence establishing a prima facie case. The Commission concluded in *Waldron* that the complainant may establish a prima facie case to satisfy the burden of proof, by showing that:

- (1) the number of occupants of the household has not changed;
- (2) the potential for energy utilization is low; and
- (3) the prior billing history shows no previous abnormalities.

Once a prima facie case has been established, the burden of going forward, 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. *Id.* If the utility rebuts a complainant’s evidence, the burden of going forward shifts back to the complainant, who must rebut the utility’s evidence by a preponderance of the evidence. *Poorbaugh v. West Penn Power Co.*, Docket No. C-00934745 (Opinion and Order entered December 9, 1994), vacated on other grounds, 666 A.2d 744 (Pa.Cmwlth. 1995). Although the burden of going forward with the evidence may shift from one party to another, the “burden of proof” (burden of persuasion) never shifts. It always remains on the complainant. *Replogle v. Pennsylvania Electric Co.*, 54 Pa. PUC 528 (1980), and *Waldron*.

The Commonwealth Court in *Milkie*, provided the controlling principle in alleged overbilling cases. *Milkie* established that even when the utility can present evidence that it has tested the customer’s meter and found it to be accurate, the customer may, nonetheless, prove his or her case by circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. *Milkie v. Pa. Pub. Util. Comm’n.*, 768 A.2d 1217, 1219-20 (Pa. Cmwlth. 2001); *Waldron*; *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Final Order entered November 15, 2011).

More specifically, the Commonwealth Court interpreted the “Waldron Rule” as follows:

While the rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a prima facie case of overbilling by a utility company, we believe this view is too restrictive. Rather, the controlling principle is that even where the utility can present evidence that it has tested the customer’s meter and found it to be accurate, the customer may, nonetheless, prove his case by circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal direct proof that his meter had malfunctioned. *Burleson v. Pa. Pub. Util. Comm’n*, 501 Pa. 433, 435-36, 461 A.2d 1234, 1235 (1983). Any circumstantial evidence which meets this standard will establish a prima facie case.

Once it is determined that the complainant has made out his prima facie case, the burden of going forward shifts to the utility, but the ultimate burden of persuasion remains with the complainant. The Commission must measure the weight and credibility of all the evidence, and simply because the ratepayer has presented a prima facie case does not obligate the Commission to credit this evidence or to give it any special weight. If the utility presents evidence found to be of co-equal (or greater) weight with that of the complainant, the complainant will not have met his burden of proof. At this stage, the Waldron doctrine provides “that the mere proof by the utility that its power measuring devices were accurate is no longer the sole determinant as to whether there is a basis to a complaint of overbilling.” *Id.* at 436, 461 A.2d at 1236 (emphasis supplied). Finally, where the Commission has dismissed the complaint because the customer failed to sustain his burden of persuasion (generally a fact question), rather than because the customer failed to present a prima facie case as a matter of law, the Waldron rule is irrelevant on appeal. *Id.* at 436, 461 A.2d at 1236.

Milkie. 768 A.2d at 1219-20 (footnotes omitted).

In the instant Complaint, the Complainant is the sole occupant of the service address. FOF 3. The record does not show that the occupancy has changed.

The Complainant has three gas appliances at the service address:

- (1) a stove;
- (2) a house heater; and
- (3) a water heater.

FOF 5.

Based on the appliances contained at the household, the Complainant is a gas heating customer. The record does not include the capacity of each gas appliance. The Complainant's gas usage in CCF (100 cubic feet) is as follows:

Period	Meter Readings		No. of Days	Usage (ccf)	Heat Usage	No. Degree Days	CFDD ⁵
	From	To					
3/18/15 – 3/17/16	1553	2572	365	1019	942	3589	26.3
3/17/16 – 3/20/17	2572	3792	368	1220	1143	3984	28.7
3/20/17 – 3/20/18	3792	4665	365	873	796	4216	18.9

Tr. 42-43, PGW Exhibit 3.

On April 16, 2018, PGW personnel conducted a meter test of the meter that was at the service address. PGW Exhibit 4. The meter tested within accepted tolerances for accuracy. Tr. 42, PGW Exhibit 4.

The Complainant testified that a fire occurred at the service address in September 2015. Tr. 22. The Complainant also testified that the service address had windows that were broken to combat the fire. These windows had wood panels inserted where they were broken after the fire occurred in September 2015 until the windows were repaired and replaced in

⁵ CFDD = Cubic feet of gas used per degree day.

December 2017. Tr. 22. The Complainant testified that she did not turn off her gas during the period that her windows were broken because she did not want her pipes to freeze. Tr. 25.

The record shows that of the three years examined for gas usage at the service address after the fire, the period from March 2016 to March 2017 had the highest usage of gas service. PGW Exhibit 3. It is reasonable to conclude that the period from March 2016 to March 2017 was considerably affected by the service address having broken windows and thus, heat escaped from the service address causing more consumption of gas for heat.

I find the usage data consistent with a gas heating customer with a substantial increase of usage during the period when the service address had broken windows. (September 2015 through December 2017). The usage is consistent with the circumstances of the service address. I do not find that the usage is unreasonable for the three gas appliances at the service address.

Based on the record evidence the Complainant has failed to prove that her gas bills are abnormally high for her service address. I find that the Complaint regarding a high gas bill should be denied.

III. Payment Arrangement

There is no dispute that the Complainant is the responsible ratepayer for gas service and the sole occupant at the service address. Tr. 19. The Complainant was enrolled in the Respondent's CAP program on May 13, 2013 but her CAP agreement was suspended on July 29, 2015, because of the Complainant's failure to make payments. Tr. 39, PGW Exhibits 1 and 2.

The Complainant has requested a payment arrangement. The record evidence shows that the Respondent issued a payment arrangement to the Complainant in December 2017. PGW Exhibit 2. The record evidence shows that the Complainant defaulted on the Company-

issued payment arrangement on February 21, 2018. *Id.* The record does not show that the Commission has issued a payment arrangement to the Complainant.

The Commission follows the rules set forth in the Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.*, when it addresses payment arrangements. Section 1405 of the Code, 66 Pa.C.S. § 1405, specifically addresses payment arrangements. Relevant to this proceeding, 66 Pa.C.S. § 1405(a) – (d) states,

§ 1405. Payment arrangements.

(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.

(c) Customer assistance programs.—Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

(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 arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

Although Section 1405(c) of the Code, 66 Pa.C.S. § 1405(c), prohibits the Commission from setting a payment arrangement on an arrearage accrued under customer assistance program rates, when a Complainant has a mixed arrearage, the Commission may bifurcate the arrearage and establish a payment arrangement on the non-CAP arrearage. Nevertheless, the Commission is not required to set a payment arrangement on a bifurcated arrearage and may decline to do so if the Complainant has exhibited a poor payment history and inability to keep prior payment arrangements with the company. *Hewitt v. PECO Energy Co.*, Docket No. F-2011-2273271 (Order entered September 12, 2013). Since the Commission can only give a limited number of payment arrangements, a payment arrangement issued on a non-CAP arrearage in a scenario where the Complainant is likely to default is not in the customer's best interest. *Joy Turner v. Philadelphia Gas Works*, C-2013-2388319 (Order entered June 19, 2014).

In the instant proceeding, the Complainant's CAP arrearage is \$27.25. FOF 25. Consistent with 66 Pa.C.S. § 1405(c) the Commission is prohibited from granting a request for a payment arrangement on this arrearage of \$27.25 because it was accrued under the Company's CAP rates. However, the Complainant's outstanding balance as of June 1, 2018, was \$5,516.29. Tr. 36, PGW Exhibit 1. Thus, the Complainant has a non-CAP arrearage of \$5,489.04 (\$5,516.29 (outstanding balance) - \$27.25 (CAP arrears) = \$5,489.04).

The Complainant has had the following six payments made for her gas service:

- (1) March 23, 2016 -- \$278.00 LIHEAP;
- (2) July 6, 2016 -- \$65.00 LIHEAP;
- (3) January 4, 2017 -- \$258.00 LIHEAP;
- (4) January 3, 2018 -- \$307.91 CRISIS;
- (5) April 23, 2018 -- \$40.00 Complainant's check; and
- (6) May 22, 2018 -- \$30.00 Complainant's check.

Tr. 37-38, PGW Exhibit 1.

These six payments were made over the period of January 4, 2015, through June 1, 2018, or 42 months. Thus, the Complainant has had 6 months of payments out of 42 months or 14.3% of the 42 months. It is noted that four of the six payments made on behalf of the Complainant were through grants. The Complainant personally paid just two of the six payments. The two payments made by the Complainant did not equate to the full amount billed for the month the payments were made—that is the amount billed for April 2018, was \$190.78 and the Complainant paid \$40.00; the amount billed for May 2018, was \$65.13 and the Complainant paid \$30.00. PGW Exhibit 1.

The Respondent's witness testified that the Complainant failed to make a good faith effort to pay her gas bill. Tr. 38. I agree. The Complainant's payment history is poor.

Furthermore, the Complainant received from the Respondent a payment arrangement on December 13, 2017, to make monthly payments in the amount of \$190.00 over 24 months. PGW Exhibit 2. The Complainant defaulted on the payment arrangement on February 21, 2018. *Id.*

Considering the totality of the evidence, the Complainant has shown a poor payment history and an inability to keep the Company-issued payment arrangement. Consistent with *Hewitt*, the Complainant is not entitled to a Commission-issued payment arrangement on her non-CAP arrears.

IV. Conclusion

The Complainant has failed to sustain her burden of proof. Accordingly, 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 has the burden to put forth evidence establishing a prima facie case that the bills are high. *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980).

5. Even when the utility can present evidence that it has tested the customer’s meter and found it to be accurate, the customer may, nonetheless, prove his or her case by circumstantial evidence which would support a finding that the metered usage exceeded the actual usage. *Milkie v. Pa. Pub. Util. Comm’n.*, 768 A.2d 1217, 1219-20 (Pa. Cmwlth. 2001); *Waldron*; *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Final Order entered November 15, 2011).

6. The tolerance for accuracy of a meter is $\pm 2.0\%$. 52 Pa.Code § 59.22.

7. The Complainant failed to sustain her burden to prove her bills received for gas service were high.

8. The Complainant has a mixed arrearage in the amount of \$5,516.29 with an amount of \$27.25 in CAP arrears and an amount of \$5,489.04 in non-CAP arrears ($\$27.25 + \$5,489.04 = \$5,516.29$).

9. Regarding the CAP arrears, customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission. 66 Pa.C.S. § 1405(c).

