

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                        |   |                |
|------------------------|---|----------------|
| Janette Lee-Curry      | : |                |
|                        | : |                |
| v.                     | : | C-2018-3000610 |
|                        | : |                |
| 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 incorrectly billed charges and unawareness of a payment arrangement between her and the Respondent. This decision also finds that Complainant is not eligible for a payment arrangement at the service address in the formal complaint (Complaint). Therefore, this decision denies the Complaint.

**HISTORY OF THE PROCEEDING**

On March 20, 2018, Janette Lee-Curry (Ms. Lee-Curry or Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (PUC or Commission) against the Philadelphia Gas Works (PGW or Respondent or Company). The Complainant alleged the following five allegations:<sup>1</sup>

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<sup>1</sup> The Complainant also requested information about any liens on her property. The Complainant was advised by Prehearing Order dated April 12, 2018, that claims regarding municipal liens on property are properly adjudicated in the Municipal Court of Philadelphia or the Court of Common Pleas. 66 Pa.C.S. § 1414(a).

- (1) The Respondent has threatened to terminate gas service;
- (2) There are incorrect charges on the Complainant's bill;
- (3) The Complainant has not received copies of her bill for eight months and does not know the accounting for her gas service;
- (4) The Complainant requests a payment arrangement and acknowledged that the Respondent offered a payment arrangement, but she was unable to keep the terms;
- (5) The Complainant believes there is an agreement concerning her gas service account that she was not made aware of.

The Complainant made the following three requests:

- (1) that she be informed of any possible liens by the Respondent on her property;
- (2) that she be granted an affordable payment arrangement; and
- (3) that she be given an accounting of her gas service account.

The Complaint was served electronically (eService) by the Commission's Secretary on March 22, 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, Laureto Farinas, Esquire, filed an Answer on April 11, 2018. The Answer admitted that the Respondent sent a termination notice to 5906 Old York Road, Philadelphia, PA, the service address of the Complainant. The Answer denied that there are incorrect charges on the Complainant's bill.

Also, in the Answer, the Respondent averred it had no record that the Complainant disputed her bill for the last eight months. The Respondent averred that the Commission's Bureau of Consumer Services (BCS) concluded in an informal complaint at Case No. 3578171 that the Complainant was in default of a Commission-issued payment arrangement.

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

By Hearing Notice dated April 16, 2018, this Complaint was scheduled for an initial hearing on Tuesday, May 22, 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 12, 2018, the undersigned provided the procedural rules for this proceeding.

The initial hearing convened as scheduled on May 22, 2018. Janette Lee-Curry was present and represented herself. Counsel for the Respondent, Graciela Christlieb, Esquire,<sup>2</sup> was present and was accompanied by one witness, Jennifer Pearson.

Ms. Lee-Curry testified and sponsored one exhibit, Complainant's December 12, 2017, PGW bill, which was identified as Complainant Exhibit 1.

The Respondent's witness sponsored the following seven exhibits:

- (1) PGW Exhibit 1 – account statement for service address;
- (2) PGW Exhibit 2 – history of Complainant's payment agreements;
- (3) PGW Exhibit 3 – BCS Case No. 3578171;
- (4) PGW Exhibit 4 – letter stating lien on service address;
- (5) PGW Exhibit 5 – PGW Answer to Complaint;
- (6) PGW Exhibit 6 – Complaint; and
- (7) PGW Exhibit 7 – Complainant's gas service account contacts history.

All seven PECO exhibits were admitted into the record over the Complainant's objection to PGW Exhibits 4 and 5.

The undersigned ALJ directed the Respondent to produce the bill for November 10, 2015, as the testimony at the evidentiary hearing made the bill critical to the dispute. By Order dated May 25, 2018, the undersigned ALJ also directed a further hearing be scheduled for both parties to testify to and examine the November 10, 2015, bill.

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<sup>2</sup> On May 16, 2018, the Respondent filed simultaneously a Withdrawal of Appearance for Mr. Farinas and an Entry of Appearance for Ms. Christlieb.

By Further Hearing Notice dated May 25, 2018, the Complaint was scheduled for further hearing on Wednesday, July 11, 2018, at 10:00 a.m.

The further hearing convened as scheduled. Ms. Lee-Curry was present and represented herself. Attorney Christlieb was present and was accompanied by one witness, Jessica Glace. Ms. Glace testified and sponsored one exhibit identified as PGW Exhibit 8. PGW Exhibit 8 is the PGW bill to the Complainant dated November 10, 2015. PGW Exhibit 8 was admitted into the record without objection.

The entire transcript was received on August 7, 2018 and consisted of 160 pages of transcribed testimony. The record closed on August 7, 2018, when the transcript was received.

This matter is now ripe for decision.

#### FINDINGS OF FACT

1. The Complainant is Janette Lee-Curry, who currently resides at 6510 North 8<sup>th</sup> Street, Philadelphia, Pennsylvania 19126. Tr. 55, 69.

2. There are four adult occupants at the Complainant's home address:

- 1) The Complainant;
- 2) The Complainant's adult daughter who is handicapped; and
- 3) The Complainant's two adult tenants.

Tr. 56, 58-59.

3. The adult tenants pay the Complainant \$400.00 per month each for rent, and therefore, the Complainant receives \$800.00 per month for rent at the home address. Tr. 59.

4. The Complainant's daughter has no income. Tr. 60.

5. The Complainant is retired and estimated she receives \$1,200.00 per month after taxes on the real estate investments that she owns. Tr. 57.

6. The Respondent is Philadelphia Gas Works, a gas distribution utility company with the service territory of Philadelphia, Pennsylvania.

7. The Complainant is the landlord and owner of 5906 Old York Road, Philadelphia, PA, which is the service address. Tr. 8.

8. The Respondent provides gas heat service to the service address. Tr. 8, 14.

9. The Complainant established the service account for the service address on February 8, 2007. Tr. 115.

10. In May 2011, the Complainant began a payment arrangement with the Respondent at the service address on her heating account. Tr. 9-10, 37, PGW Exhibit 2.

11. The service address is a three-story building with a store front on the first floor, and two-bedroom apartments on both the second and third floors. Tr. 14-15, 44.

12. The service address has three meters, one for heating the whole building, one for gas appliances of the second floor and one for gas appliances for the third floor. Tr. 45.

13. The tenants in the second and third floor apartments have a gas service account in their respective names. Tr. 45.

14. The Complainant pays for the meter that runs the heat for the building. Tr. 45.

15. The last business that occupied the store front of the service address was a church. Tr. 16.

16. The store front of the service address was occupied off and on through the duration of the payment arrangement. Tr. 15-16.

17. The store front of the service address is currently vacant and has been vacant for about two years due to renovations. Tr. 15.

18. The second and third floors were occupied during the payment arrangement and are currently occupied. Tr. 16.

19. The Complainant made a payment of \$4,000.00 to the Respondent on October 30, 2015; a payment of \$200.00 on April 12, 2016, a payment of \$2,000.00 on October 11, 2017, and a payment of \$100.00 on April 5, 2018. Tr. 26-28, 38, 80-82, PGW Exhibit 1.

20. The rest of the payments made by the Complainant were in the amount of \$150.00 per month. Tr. 41, 80-81, PGW Exhibit 1.

21. The payments of \$150.00 or less made by the Complainant are sometimes less than the actual amount owed for the monthly service. Tr. 82.

22. In 2016, the Complainant moved and changed her mailing address with the U.S. post office to P.O. Box 12364, Philadelphia, PA 19119 from 305 East Walnut Lane, Philadelphia, PA. Tr. 18-19.

23. In June 2017, the Complainant stopped receiving PGW gas service bills for the service address. Tr. 35-36.

24. In October 2017, the Complainant went to the Respondent's Germantown Office to inquire about receiving her monthly bill because she was not receiving her monthly bill in the mail. Tr. 19.

25. At the Complainant's October 2017 visit to the Respondent's Germantown Office, the Complainant was shown a printout of her payment history but was not shown her bill. Tr. 19-20.

26. In December 2017, the Complainant went back to the Respondent's Germantown Office and she was shown a printout of her bill for gas service dated December 20, 2017. Tr. 20-21, Complainant Exhibit 1.

27. In March 2018, the Complainant called the Respondent to inquire about the liens on her property and that is when it was discovered that the Respondent was sending the Complainant's gas service bills to 305 East Walnut Lane, Philadelphia, PA. Tr. 23-24.

28. The mailing address for the property at 5906 Old York Road, Philadelphia, Pennsylvania was 305 East Walnut Lane, Philadelphia, PA before the Complainant sold the Walnut Lane property. Tr. 33-34.

29. In March 2018, the Complainant informed the Respondent of the new address to send her bills, which is P.O. Box 12364, Philadelphia, Pennsylvania 19119. Tr. 24-25, 34, 36, 61.

30. The Complainant became aware of a lien on the service address through a letter from the Respondent dated March 21, 2016, notifying her of the lien. Tr. 48-49, PGW Exhibit 4.

31. The Respondent's notification of lien letter was sent to the Complainant at 305 East Walnut Avenue, Philadelphia, Pennsylvania. Tr. 49, PGW Exhibit 4.

32. Ms. Jennifer Pearson is employed by the Respondent as a customer review officer to investigate informal and formal complaints filed by PGW customers with the Commission. Tr. 74-75.

33. Ms. Pearson investigated the instant Complaint. Tr. 76.

34. The Complainant's outstanding balance at the service address is \$11,057.60. Tr. 78, PGW Exhibit 1.

35. The payments made by the Complainant from April 7, 2015 through May 18, 2018, paid down the balance owed for service and no portion went towards late charges or liens. Tr. 80, PGW Exhibit 1.

36. The Complainant never made payments that paid the balance down to \$0.00. Tr. 82, PGW Exhibit 1.

37. On October 29, 2015, the Complainant agreed to a six-month payment arrangement which required her to make a lump sum payment of \$4,000.00 as a down payment on the outstanding balance. Tr. 89, PGW Exhibit 7.

38. The Complainant paid the \$4,000.00 down payment on October 30, 2015. Tr. 89, PGW Exhibit 7.

39. It is not the normal course of business of the Respondent to send a payment arrangement between the Company and the customer in writing. Tr. 93-96.

40. The terms of the payment arrangement are on the bill that the customer receives. Tr. 106-07.

41. A payment arrangement between the customer and the Respondent is put in writing if a written document is requested by the customer. Tr. 94.

42. The Complainant defaulted on the October 2015 payment arrangement due to lack of payments consistent with the terms of the agreement. Tr. 92, 147, PGW Exhibits 1 and 2.

43. It is the normal course of business of the Respondent to send the customer a settlement letter with the terms of the payment arrangement if that payment arrangement resulted from the settlement of a formal complaint. Tr. 107-09.

44. The messaging center of a customer's bill notifies the customer about a payment arrangement if the customer and the Respondent agree to a payment arrangement. Tr. 98-99, 103, 106, 125, 127, PGW Exhibit 8.

45. Jessica Glace is employed by the Respondent as a senior customer review officer that handles informal and formal complaints with the Commission. Tr. 139.

46. Ms. Glace investigated and reviewed the information for the Complainant's bill dated November 10, 2015. Tr. 140, PGW Exhibit 8.<sup>3</sup>

47. The November 2015 bill from the Respondent to the Complainant was mailed to 305 East Walnut Lane, Philadelphia, PA 19144-1033. Tr. 146, PGW Exhibit 8.

48. The November 2015 bill had three itemized charges:

- 1) current agreement charges of \$875.00,
- 2) current service charges of \$85.71, and
- 3) a total amount due of \$960.71 ( $\$875.00 + \$85.71 = \$960.71$ ).

Tr. 143, PGW Exhibit 8.

49. The November 2015 bill indicated a new negotiated payment arrangement was created. Tr. 145, PGW Exhibit 8.

50. The November 2015 bill indicated a six-month payment agreement on a balance of \$5,247.39. Tr. 144, PGW Exhibit 8.

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<sup>3</sup> Ms. Pearson was no longer employed by PGW at the time of the hearing for PGW Exhibit 8, and therefore, was not available to testify regarding PGW Exhibit 8. Tr. 140.

51. The Complainant's bills were sent to 305 East Walnut Lane, Philadelphia, PA 19144-1033 until the Complainant contacted PGW to change her billing address. Tr. 146.

52. The Complainant contacted PGW to change her billing address on April 30, 2018. Tr. 147.

## 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. 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 Complainant May Receive A Payment Arrangement

The Complainant is the responsible ratepayer for gas service at the service address. Tr. 8. However, the Complainant does not live at the service address. The Complainant lives at 6510 North 8<sup>th</sup> Street, Philadelphia, Pennsylvania 19126. Tr. 55, 69. The Complainant is the owner and landlord of the service address. Tr. 8.

The service address when fully occupied was leased to a church on the first floor and two tenants, one tenant in the two-bedroom apartment on the second floor, and the other tenant in a two-bedroom apartment on the third floor. Tr. 14-16, 44. The Complainant receives income from the leasing of this property. Tr. 8, 57.

The Responsible Utility Customer Protection Act is Chapter 14 of the Public Utility Code. 66 Pa.C.S. § 1401 *et seq.* The General Assembly sought to “provide protections against rate increases for timely paying customers resulting from other customers’ delinquencies...[and] to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills.” 66 Pa.C.S. § 1402(2).

A payment arrangement is, “An agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.” 66 Pa.C.S. § 1403. “...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).

To establish a payment arrangement the monthly household income of the service address must be determined. See 66 Pa.C.S. § 1405(b). Household income is defined as, “The combined gross income of all adults in a **residential household** who benefit from the public utility service.” 66 Pa.C.S. § 1403 (Emphasis added.). “Household” as an adjective in the phrase “household income” is defined as, “Belonging to the house and family; domestic.” Black’s Law Dictionary 377 (Abridged 5<sup>th</sup> ed. 1983). “Household” as a noun in the phrase “residential household” is defined as, “A family living together. Those who dwell under the same roof and compose a family.” *Id.* The Complainant is not part of the residential household at the service address because she does not live at the service address. Although the Complainant may benefit from the utility service as her tenants compensate her for use of the dwelling or building that also has gas service in the common areas, that is not a direct benefit from the gas service. Rather, that is an indirect benefit.

It is noted that the bills for the service address show the service obtained is residential heat and domestic. Complainant Exhibit 1 and PGW Exhibit 8. The type of service at the service address is not controlling here and it does not determine the customer’s status as a ratepayer in this instance.

The Complainant, as the landlord and not an occupant of the service address, generates income from the service address. The service address houses two tenants and a vacant store front for non-residential use. Tr. 14-15, 44. The Complainant is currently responsible for the store front space and heat for the service address. Tr. 45.

The Commission has considered mixed-use accounts for issuing payment arrangements. Mixed usage of commercial and residential public utility service at a service

address is a mixed-use account. See *Underwood v. Equitable Gas Co.*, Docket No. Z-00329132 (Opinion and Order entered April 1997) (customer's service address was a barbershop and customer residence) and *Hall v. Columbia Gas of Pa., Inc.*, Docket No. F-00897770 (Final Order entered January 10, 2003) (customer's residence was the same as his carpet sweeper business).

The instant Complainant is distinguished from a mixed-use account because the account is individually metered for gas service to the first floor, store front space and for heating the building. Tr. 45. The store front space is used by a non-residential entity. Tr. 16. The Complainant does not reside at the service address. Tr. 55, 69.

52 Pa.Code § 56.2 defines "Residential service" as,

- (i) Public utility service supplied to a dwelling, including service provided to a commercial establishment if concurrent service is provided to a residential dwelling attached thereto.
- (ii) The term does not include public utility service provided to a hotel or motel.

52 Pa.Code § 56.2 defines "Dwelling" as, "A house, apartment, mobile home or single meter multiunit structure being supplied with residential service.

The service address at issue is not a dwelling as it is a multi-meter multiunit structure. FOF 12.

The service address does not meet the definition of "dwelling," and therefore, does not comply with the definition of "residential service." The Complainant is a non-resident and is obtaining income from the service address. The treatment of the Complainant concerning a payment arrangement is not a residential account. The rate class at the service address is general service and not residential. PGW Exhibit 1 and Complainant Exhibit 1. I find that the Complainant's account is similar to a commercial account for public utility service.

The Commission has held that a commercial account for public utility service falls within the Commission regulations at 52 Pa.Code § 55.1 *et seq.* and is not entitled to a payment arrangement or other protections applicable to a residential account under the Public Utility Code at 66 Pa.C.S. § 1401 *et seq.* or Commission regulations at 52 Pa.Code § 56.1 *et seq.* *Pankey d/b/a Change Hair Salon v. PPL Electric Utility Corp.*, Docket No. C-2008-2014140 (Final Order entered February 20, 2009); *see Kayla's Place Inc. v. Duquesne Light Co.*, Docket No. C-00981711 (Order entered May 24, 1999); *Kenny v. Duquesne Light Co.*, Docket No. C-00967789 (Order entered November 27, 1996). The Commission does not provide payment arrangements for commercial accounts. A public utility, however, has the discretion to offer a payment arrangement to a commercial customer, but is not required to do so by statute, Commission regulation or order. *Pankey d/b/a Change Hair Salon v. PPL Electric Utility Corp.*, *supra* (citation omitted).<sup>4</sup>

I find that the record evidence shows that the Complainant does not fit the criteria for a Commission-issued payment arrangement at the service address. The Complainant's request for a payment arrangement is denied.

### III. Whether There Are Incorrect Charges on Complainant's Bill

The Complainant alleged that her payments for gas service were being first credited to a lien on the service address and late fees and then to her gas usage. Tr. 17. As evidence to support this allegation, the Complainant provided Complainant Exhibit 1.

The Respondent provided PGW Exhibit 1, which is a statement of accounts for charges and payments from March 20, 2015, through May 15, 2018. PGW Exhibit 1 showed all payments were credited to the Complainant's billed usage. Furthermore, the Complainant's own exhibit showed a statement of account activity from November 8, 2017, through December 11, 2017. Complainant Exhibit 1. The Complainant was not charged a late fee. The Complainant paid on November 30, 2017, an amount of \$150.00 on an outstanding balance of

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<sup>4</sup> There is nothing that prevents the Complainant from filing a formal complaint requesting a payment arrangement for the utility services at the address where she lives.

\$8,738.16 for a remaining balance of \$8,588.16 ( $\$8,738.16 - \$150.00 = \$8,588.16$ ).

Complainant's usage charges were \$370.00. *Id.* The Complainant's total bill for December 12, 2017, was \$8,958.16 ( $\$8,588.16$  (outstanding balance) +  $\$370.00$  (current usage) =  $\$8,958.16$ ).

The record evidence shows that the Complainant's payments were credited in accordance with Commission statutes, rules and regulations. The allegation made by the Complainant otherwise is unsupported by the record evidence.

#### IV. The Complainant's Mailing Address and Allegedly Not Receiving Bills

The Complainant's Complaint alleged that the Respondent stopped providing copies of her bill for the service address and that she had not received a bill for gas service for eight months. PGW Exhibit 6. The Complainant agreed she received a letter from the Respondent sent to 305 East Walnut Lane, Philadelphia, PA 19144-1033 (Walnut Lane mailing address) about the service address dated March 21, 2016. Tr. 49, PGW Exhibit 4. Although the Complainant received the bill dated December 12, 2017, and provided it as an exhibit, the Complainant went to the Germantown Office of the Respondent and was handed this bill as a printout at that office. Tr. 20-21, Complainant Exhibit 1. The mailing address for the December 2017 bill was the Walnut Lane address. Complainant Exhibit 1. The Complainant did not receive the December 2017 bill from the Respondent through the mail.

The Complainant agreed that the Walnut Lane mailing address was correct for the service address prior to moving out of the mailing address. Tr. 18, 33-34, 50. The Complainant testified that she forwarded her mail through the post office after moving from the Walnut Lane address to, "P.O. Box 12364, Philadelphia, PA 19119." Tr. 60-61. The Complainant testified that she was unsure of the exact time when she moved from the Walnut Lane mailing address. Tr. 18, 61.

There is no dispute that the Complainant received the lien letter that was mailed to the Walnut Lane mailing address in March 2016. Tr. 48-49, PGW Exhibit 4. The record evidence shows that the Complainant went to the Respondent's Germantown Office because she

did not receive her bill in October 2017. I find it reasonable to conclude that the Complainant moved sometime between March 2016 and October 2017.

The record evidence shows the Complainant did not inform the Respondent of her change in address until April 2018. Tr. 24, 146-47, 153.

The Complainant is responsible for informing the Respondent of the correct mailing address for her bills. *Bhattacharyya v. Pa. American Water Co.*, Docket No. C-2009-2115020 (Order entered August 20, 2010). The Complainant's own testimony was that she did not inform the Respondent of her change in mailing address for the service address until April 2018. Tr. 24. The Respondent sent the bills to the mailing address it had for the Complainant prior to her move until the Company was informed by the Complainant in April 2018 to send them to a different address.

I do not find that the Respondent violated any statute, Commission regulations or orders through its conduct in mailing the Complainant's bills. The Complainant is culpable for not receiving bills for gas service prior to April 2018 because she did not inform the Respondent of her move from her mailing address at 305 East Walnut Lane, Philadelphia, PA 19144-1033 until April 2018 to correct the mailing address for her bills.

#### V. Dispute Over Company-Issued Payment Arrangements

The Complainant alleged that she had a 60-month payment arrangement with the Company that she believed started in 2011. Tr. 9-10. The Complainant alleged that she complied with the 2011 payment arrangement and successfully finished paying on the 2011 payment agreement. Tr. 10-11, 17-18. The Complainant stated in her Complaint that she was offered a Company-issued payment arrangement in 2015. Tr. 13, PGW Exhibit 6. The Complainant testified that she did not accept the Company-issued payment arrangement in October 2015. Tr. 51-53. The Complainant contended that she made a voluntary payment of \$4,000.00 in October 2015. Tr. 52. The Complainant stated that her voluntary payment was not for the Company-issued payment arrangement because she did not agree to the terms of the

Company-issued payment arrangement. Tr. 18, 47. Complainant testified that she did not see any documentation on her bills regarding any Company-issued payment arrangement in October 2015. Tr. 47.

The Respondent produced evidence that showed the Complainant contacted the commercial resource center on October 29, 2015 and agreed to bring in \$4,000.00 to the Germantown Office as a down-payment for a six-month payment arrangement. Tr. 89-90, PGW Exhibit 7. On October 30, 2015, the Complainant went to the Germantown Office of the Respondent and paid \$4,000.00 to her account for the service address. Tr. 89-92, PGW Exhibits 1 and 7. Furthermore, the Complainant's bill for usage following the \$4,000.00 payment, which was dated November 10, 2015, noted the following after the itemization of the current charges:

- (1) Agreement billing information – Your remaining agreement balance is \$5,247.39. You have 6 installments remaining to satisfy your agreement;
- (2) Account Balance information – Your account balance is \$5,333.10, which will become due if you fail to meet the terms of your agreement; and
- (3) Message Center – New Negotiated Payment Arrangement Created.

Tr. 144-45, PGW Exhibit 8. The payment arrangement defaulted due to lack of payments. Tr. 147, PGW Exhibit 2.

The Complainant testified that she never received the bill identified as PGW Exhibit 8. Tr. 154.

The evidence does not support the claims of the Complainant. The Complainant's testimony is not logical.

First, the Complainant in her Complaint, acknowledged a Company-issued payment arrangement where she made a down-payment of \$3,000.00, but was unable to comply with the additional monthly payments. PGW Exhibit 6. It is plausible that the Complainant simply had her figures incorrect, and the down-payment was \$4,000.00. Moreover, there is no record evidence of any other payment arrangement concerning the Complainant and the Respondent requiring a large payment from the Complainant.

Second, the timing of the payment by the Complainant after the documented contact with the Respondent shows performance of a verbal agreement. The terms of the payment arrangement were discussed on October 29, 2015, to pay \$4,000.00 as a down-payment. The \$4,000.00 payment was made on the following day, October 30, 2015.

In the process of interpreting a contract, the court can receive great assistance from the interpreting statements made by the parties themselves or **from their conduct in rendering or in receiving performance under it**. The practical interpretation of a contract may thus be evidenced by the parties' acts or by their words.

5 Corbin on Contract § 24.16 (2018) (Emphasis added.). "...course of performance ... is an indicator of what the parties intended at the time they formed their agreement. It is an expression by the parties of the meaning that they gave to the terms of the contract they made." *Id.*

The performance by the Complainant to pay \$4,000.00 to the Respondent following the discussion of a down-payment in the same amount, can reasonably be interpreted as performance by the Complainant under the payment arrangement discussed with the Respondent.

Lastly, the next bill after the \$4,000.00 payment dated November 12, 2015, showed a newly negotiated payment arrangement with terms of 6 monthly installments in the amount of \$875.00 for a total of \$5,250.00(6 x \$875.00 = \$5,250.00). The Complainant's agreement balance was \$5,247.39. PGW Exhibit 8.

There is no evidence that the Complainant failed to receive the November 2015 bill. Although the Complainant stated she never received this bill, she did not support her claim. Tr. 154. The Complainant stated that she moved from her Walnut Lane mailing address where the November 2015 bill was sent, but the Complainant never provided evidence of when she moved. The Complainant stated in her Complaint, "I have not had a bill reflecting my acct. for 8 months." PGW Exhibit 6 at 2. The Complaint was filed on March 20, 2018. The November 2015 bill is well beyond the eight-month period that the Complainant claimed she had not received her bills.

Furthermore, the Complainant did not dispute receiving a Lien letter dated March 21, 2016, at the Walnut Lane address. Tr. 48-49, PGW Exhibit 4. It is illogical that the Complainant did not receive her October and November 2015 bills, but received a March 2016 letter all mailed to the same address. As mentioned above, the Complainant moved sometime between March 2016 and April 2018. See *supra* at 14. October and November 2015 is not within the established timeframe for the Complainant's move.

The totality of the record evidence does not show that the Complainant satisfied her burden of proof concerning her allegation that there was no payment arrangement. The Respondent was successful in its burden of persuasion that the Complainant should have known of the Company-issued payment arrangement in October 2015. Furthermore, the Complainant failed to provide proof that she satisfied a 60-month, Company-issued payment arrangement initiated in May 2011. There is no record evidence of satisfaction of any payment arrangement concerning the Complainant at the service address.

I find that the Respondent had valid reason to hold the Complainant accountable for a May 2011 payment arrangement and an October 2015 payment arrangement that she should have known about. Consequently, I do not find that the actions of the Respondent violated any statute, Commission regulation or Order.

#### VI. Conclusion

The Complainant 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. The Commission has considered mixed-use accounts for issuing payment arrangements. *Underwood v. Equitable Gas Co.*, Docket No. Z-00329032 (Opinion and Order entered April 1997) (customer’s service address was a barbershop and customer residence); and *Hall v. Columbia Gas of Pa., Inc.*, Docket No. F-00897770 (Final Order entered January 10, 2003) (customer’s residence was the same as his carpet sweeper business).

4. The Complainant is not entitled to a payment arrangement at this service address because the service supplied does not fit the definition of residential service since the service address is multi-metered and the Complainant is not a resident at the service address. 52 Pa.Code § 56.2.

5. The Complainant had the burden of proof and failed to sustain her burden that she is eligible to receive a payment arrangement for the service address.

6. The Commission has held that a commercial account for public utility service ... is not entitled to a payment arrangement or other protections applicable to a residential account under the Public Utility Code 66 Pa.C.S. § 1401 *et seq.* or Commission regulations at 52 Pa.Code § 56.1 *et seq.* *Pankey d/b/a Change Hair Salon v. PPL Electric Utility Corp.*, Docket No. C-2008-2014140 (Final Order entered February 20, 2009); see *Kayla’s Place Inc. v. Duquesne Light Co.*, Docket No. C-00981711 (Order entered May 24, 1999); *Kenny v. Duquesne Light Co.*, Docket No. C-00967789 (Order entered November 27, 1996).

7. A public utility has the discretion to offer a payment arrangement to a commercial customer, but is not required to do so by statute, Commission regulation or order. *Pankey d/b/a Change Hair Salon v. PPL Electric Utility Corp.*, Docket No. C-2008-2014140 (Final Order entered February 20, 2009).

8. The customer has the responsibility to notify the utility of a change in mailing address. *Bhattacharyya v. Pa. American Water Co.*, Docket No. C-2009-2115020 (Order entered August 20, 2010).

9. The Complainant had the burden of proof and failed to sustain her burden regarding incorrect charges on her bills at the service address.

10. The Complainant had the burden of proof and failed to sustain her burden that the Respondent was culpable for the Complainant's failure to receive bills for the service address.

11. The Complainant had the burden of proof and failed to sustain her burden that she successfully completed her May 2011 payment arrangement with the Respondent.

12. The practical interpretation of a contract may be evidenced by the parties' acts or by their words. 5 Corbin on Contracts § 24.16 (2018).

13. The Complainant had the burden of proof and failed to sustain her burden of proving that she did not have an October 2015 payment arrangement with the Respondent.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Janette Lee-Curry against Philadelphia Gas Works at Docket No. C-2018-3000610 is dismissed.

