

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lucretia McNeal

v.

Philadelphia Gas Works

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C-2018-3005205

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Complaint because she failed to meet her burden of demonstrating that foreign load exists at the service address, that incorrect charges are on her bill, or that she is eligible for a second Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On September 24, 2018, Lucretia McNeal (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant placed a checkmark in the box indicating “[i]ncorrect charges are on my bill.” Under the “requested relief” section, the Complainant alleged that there may be a foreign load issue at the service address. Complainant requested that all meters at the service address be checked to ensure that she is only paying for the gas she is using.

On October 29, 2018, the Respondent filed an Answer denying that there are incorrect charges on the bill for service at 6343 Vine Street, 3, Philadelphia (service address). The Respondent further indicated that it conducted a foreign load investigation at the service address on October 25, 2018 and found that there was not any foreign load at the property.

By Hearing Notice dated November 9, 2018, a hearing was scheduled for January 10, 2019 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on November 19, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on January 10, 2019. The Complainant appeared *pro se* and testified. After a brief discussion, I allowed the Complainant to orally amend her Complaint to request a Commission-issued payment arrangement, as PGW had no objection to the requested amendment. The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Joyshalyn Moore, a PGW Customer Review Officer. The Respondent offered nine exhibits (PGW Exhs. 1, 2, 3, 4, 4-A, 5, 6, 7, & 8) which were all admitted into the record.

The record consists of a 68-page transcript and nine exhibits. The record closed on February 7, 2019, when I received a copy of the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Lucretia McNeal.
2. The Respondent in this proceeding is Philadelphia Gas Works.

3. The Complainant has lived at 6343 Vine Street, Apt. 3, Philadelphia, PA (service address) since April 2016. Tr. 7, 17, 26.

4. The Complainant's household consists of herself and her two adult children. Tr. 18-19.

5. The Complainant's children have been living with her the entire time she has been at the service address. Tr. 19.

6. The Complainant's apartment has two bedrooms, a living room, a bathroom and a kitchen. Tr. 19.

7. Gas appliances at the service address include a gas heater, a gas oven, and a gas water heater. Tr. 20-21, 35.¹

8. The Complainant uses her gas appliances on a regular basis. Tr. 22.

9. The Complainant keeps the thermostat on her gas heater set between 70 and 75 degrees. Tr. 22.

10. The Complainant has called on her landlord to fix drafts in her apartment, but her landlord has not fixed these drafts. Tr. 22, 27.

11. The Complainant contacted PGW to report a spike in her billing and suspected foreign load at the service address. Tr. 13, 34.

12. On October 25, 2018, a PGW technician visited the Complainant's apartment complex to investigate her claims. Tr. 15, 34; PGW Exh. 1.

¹ Although the Complainant testified that her gas appliances included a gas house heater, gas water heater and a gas oven, the PGW technician who visited the service address on October 25, 2018, observed only the gas house heater and gas water heater at the service address (PGW Exh. 1).

13. The Complainant was present in her apartment when the PGW technician visited the service address. Tr. 28.

14. The PGW technician found the Complainant's thermostat set at 90 degrees. Tr. 35; PGW Exh. 1.

15. The PGW technician observed that the Complainant's heater was running non-stop during his visit. Tr. 35; PGW Exh. 1.

16. The PGW technician, along with the Complainant's landlord, examined the meters in the basement, and then examined each individual apartment. Tr. 15, 28.

17. At the time of the PGW technician's visit, the technician observed two window air-conditioning units installed in her windows without insulation, which were drafty.² Tr. 35; PGW Exh. 1.

18. The PGW technician traced the gas lines on the Complainant's meter and concluded that her meter is not connected to any other apartments within the complex, and that there is no foreign load on her meter. Tr. 36; PGW Exh. 1.

19. The PGW technician advised the Complainant that heat might be escaping due to the presence of the air-conditioning units in her windows. Tr. 29.

20. The Complainant subsequently removed the air-conditioning units from her windows. Tr. 29.

21. The PGW technician determined that the Complainant's radiators needed to be bled, to let out air trapped in the system, and advised the Complainant's landlord to bleed her radiators. Tr. 30-31.

² Although the Complainant testified that she had three window air conditioning units (Tr. 29), the PGW technician documented the presence of only two window air conditioning units (PGW Exh. 1).

22. The Complainant's landlord had a maintenance man bleed the radiators that same day. Tr. 30.

23. On October 25, 2018, PGW issued a letter to the Complainant that summarized the PGW technician's visit and explained that foreign load does not exist on her meter. Tr. 37-38; PGW Exh. 2.

24. The October 25, 2018 letter also explained to the Complainant that a usage analysis verified a consistent pattern of usage at the service address, and that her bills are accurate. Tr. 38; PGW Exh. 2.

25. PGW's usage analysis demonstrated that the Complainant's gas usage had decreased. Tr. 39; PGW Exh. 3.

26. The Complainant's balance as of the date of the hearing totaled \$7,796.62. Tr. 49; PGW Exhs. 4 & 4-A.

27. During the period that the Complainant has resided at the service address, the Complainant made three payments towards her gas bills; additional payments received by PGW towards the Complainant's balance were grant payments. Tr. 41-42; PGW Exh. 4.

28. On April 24, 2017, the Complainant received a Commission-issued payment arrangement on her outstanding balance requiring her to pay \$338.00 per month to extinguish her balance. Tr. 50, 62; PGW Exh. 5.

29. On July 13, 2017, the Complainant defaulted on her Commission-issued payment arrangement due to non-payment. Tr. 51, 62; PGW Exh. 5.

30. At the time of the Commission-issued payment arrangement, the Complainant reported a gross monthly household income of \$938.00 for a three-person

household, which consisted of the Complainant's \$855.00 monthly Social Security Disability income and her son's \$83.00 Social Security income. Tr. 65; PGW Exh. 7.

31. The Complainant's gross monthly household income as of the date of the hearing totaled \$873.00, which she receives from Social Security. Tr. 60.

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

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 his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Foreign Load/Incorrect Charges

The Complainant asserted that her bills are high because she believes that foreign load exists on her gas meter at the service address. The burden of proof for “high bill” 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 *Charisse 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 (emphasis added); *see also Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011)(holding that limiting the *Waldron* Rule to the three factors is too limiting).

The Complainant maintained that her bills are high because she believes that foreign load exists on her gas meter at the service address. However, she was not able to offer anything beyond her own opinion to demonstrate that foreign load exists at the service address, or that there are incorrect charges on her bills. No matter how honest and strong the Complainant’s assertions are, they cannot form a basis for a finding of fact in her favor. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000) citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987).

In response to the Complainant’s assertions, a PGW technician investigated the Complainant’s foreign load claim on October 25, 2018. The PGW technician traced the gas lines on her meter and concluded that her meter is not connected to any other apartments within her apartment complex, and that there is no foreign load on the Complainant’s meter. Tr. 36; PGW Exh. 1.

Additionally, the PGW technician observed that the Complainant’s thermostat was set at 90 degrees and running non-stop during his visit. Tr. 35; PGW Exh. 1. The technician also observed two window air-conditioning units installed in her windows without insulation and advised the Complainant that heat might be escaping through these windows due to the presence of these air conditioners. Tr. 29, 35; PGW Exh. 1. Moreover, PGW’s investigation verified a consistent pattern of usage at the service address, that her bills are accurate, and that the Complainant’s gas usage had actually decreased. Tr. 38-39; PGW Exhs. 2 & 3.

As previously noted, the Complainant did not offer anything beyond her opinion to support her claim that foreign load exists at the service address or that her bills are incorrect.

Since the Complainant failed to meet her burden regarding her foreign load and incorrect charges claims, her Complaint on these issues must be denied.

Commission-Issued Payment Arrangement

The Complainant has requested a payment arrangement. The record reveals that the Complainant has already received and defaulted on one Commission-issued payment arrangement. 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.

Regarding the length of payment arrangements, the Public Utility Code provides the following:

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.

66 Pa.C.S. § 1405(b).

Regarding the Complainant's request for a second Commission-issued payment arrangement, the Public Utility Code provides that "[a]bsent 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." 66 Pa.C.S. § 1405(d). A "change in income" is defined at 66 Pa.C.S. § 1403 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."

Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e). A "significant change in circumstance" is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

In cases where the Commission is authorized by law to establish a payment arrangement between a customer and a utility, it has the responsibility to exercise its authority very judiciously. Specifically, the Commission will exercise its discretion to issue payment arrangements only on behalf of customers who have demonstrated some evidence of good faith effort to pay their utility bills or who have experienced a significant change of circumstances

beyond their control. *Crawford v. National Fuel Gas Distribution Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

Regarding the Complainant's previous Commission-issued payment arrangement, the record reflects that the Complainant's three-person household's gross monthly income was \$938.00. PGW Exh. 5. The Complainant testified that her household is still a three-person household, and that her household's gross monthly income is now \$873.00. The Complainant's gross-monthly household income has decreased by 6.9% ($\$938.00 - \$873.00 = \$65.00$; $\$65.00/\$938.00 = 6.9\%$). Since the Complainant's gross-monthly has only decreased by 6.9%, she does not meet the definition of a "change in income" set out in 66 Pa.C.S. § 1403. This is true regardless of whether the complainant is above or below 200% of the federal poverty level. As the Complainant has not demonstrated a change in income, she is not eligible for a second Commission-issued payment arrangement.

Even if the Complainant had met the definition of a change in income, her payment history would hinder her eligibility for a second Commission-issued payment arrangement. The record demonstrates that since the Complainant moved into the service address in April 2016, she has made only three payments towards her gas bills. Tr. 41-42; PGW Exh. 4. Additionally, the Complainant already defaulted on one Commission-issued payment arrangement. Tr. 50-51, 62; PGW Exh. 5. Therefore, even if the Complainant had experienced a change in income, based on her poor payment history in addition to her failure to keep the terms of her Commission-issued payment arrangement, I would not be able to conclude that she has made a good-faith effort to pay her utility bills, or that she should receive a second Commission-issued payment arrangement.

Moreover, the Complainant did not present any evidence to indicate that she had a significant change in circumstances as defined under 66 Pa.C.S. § 1403 that caused her to default on her prior Commission-issued payment arrangement in July 2017. Since the Complainant did not default on her prior Commission-issued payment arrangement due to a significant change in circumstances, I cannot conclude that she is eligible for an extension of her Commission-issued payment arrangement under 66 Pa. C.S. § 1405(e).

Accordingly, the Complainant's request for a second Commission-issued payment arrangement is denied.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

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. Complainant failed to sustain her burden of demonstrating that there is foreign load at the service address.

6. Complainant failed to sustain her burden of demonstrating that there are incorrect charges on her bills for gas service at the service address.

7. 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 Commission-issued payment arrangement. 66 Pa. C.S. § 1405(d).

8. "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.

9. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was a result of a significant change in circumstance. 66 Pa. C.S. § 1405(e).

10. "Significant change in circumstance" is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level: 1) the onset of a chronic or acute illness resulting in a significant loss in the customer's household income; 2) catastrophic damage to the customer's residence resulting in a significant net cost; 3) loss of the customer's residence; and 4) increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

11. Complainant failed to sustain her burden of demonstrating that she is eligible to receive a second Commission-issued payment arrangement or an extension of her previous payment arrangement.

