

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jacqueline Cherry	:	
	:	
v.	:	C-2019-3011434
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint, finding that the Complainant did not meet her burden of proving that the Respondent provided her with unreasonable service as it relates to not properly crediting payments towards the Complainant’s gas service account. Additionally, this Decision finds that the Complainant is not eligible for a second Commission-issued payment arrangement or to a reinstatement and extension of her first Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On July 5, 2019, Jacqueline Cherry (Complainant or Ms. Cherry) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW).¹ Ms. Cherry averred the following: “I would like a payment arrangement to resolve my bill. Claim I didn’t pay my bill but I did pay when I had my arrangement was on a budget.” (Complaint ¶ 5).

¹ The Complaint was served on PGW on July 10, 2019.

On July 30, 2019, PGW filed an Answer to the Complaint. PGW stated that it terminated the Complainant's service on July 10, 2019, for non-payment.² PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on August 1, 2019, the Commission scheduled this matter for a telephonic hearing on September 4, 2019 and assigned the case to me.

A Prehearing Order, served upon the parties on August 6, 2019, addressed, inter alia, the procedures applicable to the hearing.

The September 4, 2019 hearing was held as scheduled. Both parties were present for the hearing. Ms. Cherry made a request on the record³ to continue the hearing. PGW did not object to the continuance request. The continuance request was granted on the hearing record and a Hearing Notice was served to the parties on September 4, 2019, rescheduling the hearing for October 2, 2019.

The October 2, 2019 hearing was held as scheduled. Both parties were present for the hearing. Ms. Cherry made a second request on the record to continue the hearing. PGW did not object to the second continuance request. The second continuance request was granted on the record and a Hearing Notice was served to the parties on October 2, 2019 rescheduling the hearing for October 9, 2019.

The October 9, 2019 hearing was held as scheduled. Ms. Cherry testified in support of her Complaint. Ms. Cherry sponsored no exhibits for the record. Attorney Laureto Farinas was present on behalf of PGW and presented the testimony of Jessica Antonetti, a customer review officer employed by PGW, who sponsored the following four exhibits which were admitted into the record:

² Ms. Cherry's gas service was restored and was active the day of the October 9, 2019 hearing held in this matter.

³ Every hearing held in this matter was recorded over the phone by means of a tape recorder without the presence of a Court Reporter.

- PGW Exhibit 1 – Statement of Account
- PGW Exhibit 2 – Payment Arrangements
- PGW Exhibit 3 – BCS No. 3481393
- PGW Exhibit 4 – BCS No. 3632912

During the hearing, Ms. Cherry expressed a desire to submit late-filed exhibits for the record. Therefore, through an Interim Order served to the parties on October 10, 2019, the parties were given the opportunity to submit late-filed exhibits. Neither party submitted late-filed exhibits by the deadline indicated in the Order.

The record closed on October 30, 2019 through an Interim Order Closing the Record. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Jacqueline Cherry.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Cherry receives gas service from PGW at 4035 Bennington Street, Philadelphia, Pennsylvania (service address).
4. Ms. Cherry lives alone at the service address.
5. Ms. Cherry's gross monthly income is \$1,811.96.⁴
6. On September 29, 2016, Ms. Cherry filed an Informal Complaint with the Commission's Bureau of Consumer Services (BCS) at BCS No. 3481393 seeking a payment arrangement. (PGW Exhibit 3, p. 1).

⁴ Ms. Cherry testified that she makes \$834 biweekly. $(365 \text{ days} / 12 \text{ months} / 14 \text{ days}) * (\$834) = \$1,811.96$.

7. On January 27, 2017, the BCS issued a decision at BCS No. 3481393 granting the Informal Complaint and issuing Ms. Cherry a payment arrangement. (PGW Exhibit 3, p. 3).

8. The payment arrangement issued at BCS No. 3481393 was based on a gross monthly household income of \$0 for a household size of one. (PGW Exhibit 3, p. 1).

9. Ms. Cherry defaulted on the payment arrangement issued to her at BCS No. 3481393. (PGW Exhibit 2).

10. On July 13, 2018, Ms. Cherry filed an Informal Complaint with the BCS at BCS No. 3632912, alleging that she had made payments towards her account in May and June of 2018 that were not properly credited to the account. (PGW Exhibit 4, p. 1).

11. On May 7, 2019, the BCS issued a decision at BCS No. 3632912 dismissing the Informal Complaint through finding that Ms. Cherry provided no proof of additional payments made towards her account. (PGW Exhibit 4, p. 3).

12. The Statement of Account shows all transactions made on Ms. Cherry's gas service account from September 2016 to September 2019, including bills issued and payments credited towards the account. (PGW Exhibit 1).

13. Fourteen good payments have been made towards Ms. Cherry's account during the period of the Statement of Account. (PGW Exhibit 1).

14. Following a \$150 payment made on April 23, 2018, no payments were made towards Ms. Cherry's account until a \$100 payment was made on August 10, 2019. (PGW Exhibit 1).

15. When PGW is provided with proof of payments made towards a gas service account that have not been credited, PGW investigates and applies the uncredited payments to the account.

16. As of the date of the hearing, Ms. Cherry had an outstanding account balance with PGW of \$4,067.52.

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768

A.2d 1217 (Pa.Cmwlth. 2001); see also, Burlison v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

The Complainant raised two issues in her Complaint. The Complainant made a request for a payment arrangement and made a claim that she has made payments towards her gas account that have not been credited. Whether the Complainant satisfied her burden of proof as it relates to these two issues will be discussed below.

Uncredited payments

During the hearing, Ms. Cherry testified that she made payments towards her gas account that were not credited to the account. Ms. Cherry neither specified the number of uncredited payments that she made towards her account, nor for what amounts, but claimed to have made more payments towards her gas account than what is shown on her Statement of Account. The Statement of Account shows that after a \$150 payment was made on April 23, 2018, no additional payments were made towards Ms. Cherry's account until a \$100 payment was made on August 10, 2019. Ms. Cherry claims to have made payments towards her gas account between April 23, 2018 and August 10, 2019.

In response, Attorney Farinas presented the testimony of Jessica Antonetti who sponsored Ms. Cherry's Statement of Account. Ms. Antonetti testified that all of the payments made and credited towards Ms. Cherry's gas account are shown on the Statement of Account. The Statement of Account shows that Ms. Cherry did not make any payments towards her account from April 23, 2018 to August 10, 2019. PGW Exhibit 1. Ms. Antonetti testified that PGW has received no proof of payments from Ms. Cherry showing that payments were made

towards her account that have not been credited, but noted that if Ms. Cherry were to provide such proof, PGW would investigate and make the necessary adjustments to Ms. Cherry's account.

Ms. Cherry's allegation that PGW has not properly credited payments towards her account is an allegation that PGW has not provided her with reasonable service. Allegations of unreasonable service are governed by Section 1501 of the Public Utility Code, which provides:

§ 1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service....

66 Pa.C.S. § 1501. "Service" is defined as:

§ 102. Definitions

"Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them....

66 Pa.C.S. § 102.

A utility's "service" is not merely confined to the distribution of utility service, but also includes "any and all acts" related to that function. West Penn Power Co. v. Pa. Pub. Util. Comm'n, 578 A.2d 75 (Pa.Cmwlt. 1990). The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. West Penn Power Co. v. Pa.

Pub. Util. Comm'n, 478 A.2d 947, 949 (Pa.Cmwlt. 1984). The Commission has stated that a public utility is not a guarantor of either perfect service or the best possible service. Re Metropolitan Edison Company, 80 Pa. PUC 663, 672 (1993). Thus, the test to determine the adequacy of a utility's service is that of reasonableness. Scherich v. Verizon Pennsylvania Inc., Docket No. C-2008-2061244 (Order entered January 28, 2010).

As the party with the burden of proof, Complainant must initially produce sufficient credible evidence to establish a *prima facie*⁵ case. Once a *prima facie* case is established, the burden of going forward with the evidence shifts to the Respondent. After review of the record evidence, Ms. Cherry failed to produce sufficient credible evidence to establish a *prima facie* case of unreasonable service. This is because Ms. Cherry's testimony that she made payments to her gas account from April 23, 2018 to August 10, 2019 that went uncredited is not credible without any documentary evidence in support. The full extent of Ms. Cherry's evidence in support of these alleged uncredited payments are her own assertions. Mere bald assertions, 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.Cmwlt. 2000). Ms. Cherry was provided with the opportunity following the evidentiary hearing held in this matter to submit documentation as late-filed exhibits. Ms. Cherry could have taken this opportunity to submit bank statements or any other type of documentary evidence to support her allegations. Ms. Cherry did not submit any late-filed exhibits.

In order to find that PGW provided Ms. Cherry with unreasonable service by failing to properly credit her account, it must first be established that Ms. Cherry made payments towards her account that went uncredited. Next, it could then be determined whether PGW's failure to credit the payments towards Ms. Cherry's account rose to the level of unreasonable service. Ms. Cherry did not establish that she made payments towards her account that were uncredited; therefore, she did not establish a *prima facie* case of unreasonable service.

⁵ *Prima facie* is defined as evidence sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue. Black's Law Dictionary (11th ed. 2019), *prima facie*.

In conclusion, Ms. Cherry failed to meet her burden of proving that PGW provided her with unreasonable service as it relates to not crediting payments to her gas account.

Payment arrangement

Next, as Ms. Cherry made a request for a payment arrangement to help pay her outstanding account balance, Ms. Cherry's eligibility for a Commission-issued payment arrangement will be analyzed.

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1419 (Chapter 14). This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

§ 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.

66 Pa.C.S. §§ 1405(a)-(b). “Household income” is defined as the following:

§ 1403. Definitions

“Household income.” The combined gross income of all adults in a residential household who benefit from the public utility service.

66 Pa.C.S. § 1403.

Generally, the Commission is permitted to establish only one payment arrangement between a customer and a utility. The Commission may only issue a second or subsequent payment arrangement under a specific set of circumstances.

(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.

66 Pa.C.S. § 1405(d). “Change in income” is defined as the following:

§ 1403. Definitions

“Change in income.” 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.

Additionally, the Commission may reinstate and extend a defaulted upon payment arrangement under a specific set of circumstances.

§ 1405. Payment arrangements

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement

and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

66 Pa.C.S. § 1405(e). “Significant change in circumstance” is defined as the following:

§ 1403. Definitions

“Significant change in circumstance.” Any of the following criteria when verified by the public utility and 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.

A previous Commission-issued payment arrangement was established for Ms. Cherry by the BCS at BCS No. 3481393. The payment arrangement established through this BCS decision became a Commission-issued payment arrangement once Ms. Cherry failed to appeal the decision through filing a Formal Complaint.⁶ Ms. Cherry defaulted upon this Commission-issued payment arrangement. Given her default on this prior Commission-issued payment arrangement, Ms. Cherry in this instant Formal Complaint is seeking a second Commission-issued payment arrangement. A second Commission-issued payment arrangement can be established for Ms. Cherry only if she has experienced a change in income since the prior Commission-issued payment arrangement was issued and made final. 66 Pa.C.S. § 1405(d).

⁶ (3) *Resolution*. Commission staff resolution of informal complaints is binding upon the parties unless formal proceedings are initiated under §§ 56.171--56.174 (relating to formal complaints). 52 Pa. Code § 56.163(3).

Ms. Cherry testified at the hearing that her gross monthly household income is \$1,811.96 for a household of one. Ms. Cherry's gross monthly household income reported at BCS No. 3481393 was \$0 for a household of one. Thus, Ms. Cherry's gross monthly household income has increased following the issuance of her Commission-issued payment arrangement. As cited above, "change in income" is defined as having experienced a decrease in household income, not an increase in household income. 66 Pa.C.S. § 1403. Therefore, Ms. Cherry has not experienced the change of income required to be granted a second Commission-issued payment arrangement.

Although the Commission cannot establish a second Commission-issued payment arrangement for Ms. Cherry, the Commission-issued payment arrangement at BCS No. 3481393 can be reinstated and extended if Ms. Cherry defaulted on the payment arrangement as a result of a significant change in circumstance. Ms. Cherry provided no evidence at the hearing that would lead to a finding that Ms. Cherry defaulted on her Commission-issued payment arrangement as a result of a significant change in circumstance. Therefore, Ms. Cherry has not experienced a significant change in circumstance making her eligible for reinstatement and extension of her Commission-issued payment arrangement.

In conclusion, Ms. Cherry is not eligible for a second Commission-issued payment arrangement, nor is she eligible for reinstatement and extension of her first Commission-issued payment arrangement.

Conclusion

Ms. Cherry did not meet her burden of proving that PGW provided her with unreasonable service as it relates to not properly crediting payments towards her gas service account. Additionally, Ms. Cherry did not meet her burden of proving that she is eligible for a second Commission-issued payment arrangement or to a reinstatement and extension of her first Commission-issued payment arrangement. As a result, Ms. Cherry's Complaint in its entirety will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities. 66 Pa.C.S. § 1501.
4. The Complainant has not met her burden of proving that the Respondent provided her with unreasonable service.
5. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. §§ 1401-1419.
6. The Commission is authorized to establish a payment arrangement between a public utility, customers and applicants. 66 Pa.C.S. § 1405(a).
7. A customer's gross monthly household income in relation to the Federal poverty level determines the length of the payment arrangement that the Commission can issue. 66 Pa.C.S. § 1405(b).
8. 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. 66 Pa.C.S. § 1405(d).
9. If a customer defaults on a Commission-issued payment arrangement as a result of a significant change in circumstance, the Commission may reinstate the payment

