

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nneka Burnett	:	
	:	
v.	:	F-2019-3014890
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s formal Complaint as she was not able to meet her burden of establishing that her bills were incorrect. This Initial Decision also denies the Complainant’s request for a payment arrangement because she did not satisfy her burden under the Public Utility Code to demonstrate that she is eligible for a second or subsequent Commission-issued payment arrangement or an extension of her prior Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On December 5, 2019, Nneka Burnett (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against the Philadelphia Gas Works (PGW or Respondent). In the Complaint, Ms. Burnett alleged that there were no changes to her bills after she had insulation installed in her home and sought a payment arrangement.

On December 31, 2019¹, PGW filed an Answer, denying the material allegations of fact in the Complaint.

The Complaint was a timely appeal of a decision of the Bureau of Consumer Services (BCS) at Case No. 3744209 dated October 29, 2019, which denied the Complainant's informal Complaint and found that the Complainant was not eligible for another payment arrangement.

On January 3, 2020, a Hearing Notice was issued for an initial in person hearing on Wednesday, February 19, 2020, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on January 10, 2020, which provided the parties with the procedures for the hearing.

On January 13, 2020, the Complainant sent a request to have her hearing date moved up from February 19, 2020, because she did not have gas service and was concerned of her pipes freezing. Respondent did not object to this request.

Via a Cancel/Reschedule Hearing Notice dated January 14, 2020, the matter was rescheduled for an initial hearing on Thursday, January 23, 2020 at 1:00 p.m. I issued another Prehearing Order dated January 15, 2020.

The hearing convened as scheduled on January 23, 2020. The Complainant represented herself and testified on her own behalf. Complainant also presented three exhibits, which were entered into the record at the hearing. PGW was represented by counsel, Laureto Farinas, Esquire. PGW also presented the testimony of Jessica Glace, a Customer Review Officer, and offered three exhibits which were entered into the record.

The record closed on February 10, 2020, when I received my copy of the 49-page hearing transcript.

¹ On January 14, 2020, PGW filed an Amended Answer with the Commission.

FINDINGS OF FACT

1. The Complainant is Nneka Burnett, who owns 1458 East Cheltenham Avenue, Philadelphia, Pennsylvania 19124 (Service Address). Tr. 8.
2. The Respondent is Philadelphia Gas Works.
3. The Service Address is a duplex with the Complainant living in the second-floor unit and the first-floor unit unoccupied. Tr. 12-13.
4. The Service Address has two gas stoves and two gas house heaters, which are hooked up to a single meter. Tr. 13, 14, 24.
5. The Complainant resides at the Service Address alone. Tr. 11.
6. The Complainant works full time at Delaware Valley Veterans Home.
Tr. 10.
7. The Complainant receives an hourly wage of \$18.50 per hour. Tr. 10.
8. The Complainant works 40 hours per week. Tr. 11.
9. The Complainant's current gross household income of \$3,207.00² per month with one household member places the household at 302% of the Federal Poverty guidelines.³

² Monthly income is calculated as follows: $\$18.50 \times 40 = \$740.00 \times 52 = \$38,480.00 / 12 = \$3,207.00$.

³ *Federal Register*, Vol. 85, No. 12, pp. 3060-3061 (January 17, 2020). See <http://aspe.hhs.gov/poverty>.

10. The Complainant was granted a Commission-issued payment arrangement by BCS decision at Case No. 3651858 on September 17, 2018 which was broken on December 15, 2018. Tr. 38; PGW Exh. 2.

11. Under BCS Case No. 3651858, the Complainant reported an income of \$3,107.87 per month for one household member. PGW Exh. 2.

12. Under BCS Case No. 3651858, the Complainant was granted a Level 4 payment arrangement of \$235.00 Budget Billing + \$540.00 Arrears = \$775.00 per month. Tr. 38-39; PGW Exh. 2.

13. The Complainant has had six Company-issued payment arrangements - in October 2011, November 2011, October 2016, November 2017, January 2018, and June 2018- all of which have been broken or cancelled. Tr. 38; PGW Exh. 2.

14. The Complainant has used three medical certifications on the current balance. Tr. 40.

15. The Complainant was enrolled in the Customer Responsibility Program (CRP) on August 13, 2015. Tr. 31.

16. The Complainant was removed from CRP on August 24, 2016. Tr. 32.

17. A customer enrolled in CRP pays a bill based on income and number of people in the household. Tr. 32.

18. While on CRP, the Complainant paid \$134.09 per month for gas utility service. Tr. 32; PGW Exh. 1.

19. After a customer is removed from CRP, the customer is billed based on the actual gas usage at the property. Tr. 32, 36.

20. Based on the Complainant's current income, the Complainant is not eligible for CRP enrollment. Tr. 40-41.

21. The Complainant's current account balance is \$4,074.59. Tr. 37; PGW Exh. 1.

22. The Complainant's usage at the Service Address is in line with seasonal usage, with the Complainant using more gas in the winter months. Tr. 33-34; PGW Exh. 1.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the 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*, 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).

Billing Dispute

The Complainant asserts that her bills were too high. She contends that she had the Service Address insulated in 2014 and expected to see a change in her bills. The Complainant did not present any evidence to show a change in her billing or an increase in her bills.

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 *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 *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 Service Address is a duplex with the Complainant living in the second-floor unit and the first-floor unit unoccupied. Tr. 12-13. The Service Address has two gas stoves and two gas house heaters, which are hooked up to a single meter. Tr. 13, 14, 24. The Complainant’s usage at the Service Address is in line with seasonal usage, with the Complainant using more gas in the winter months. Tr. 33-34; PGW Exh. 1.

The Complainant was enrolled in CRP on August 13, 2015. Tr. 31. The Complainant was removed from CRP on August 24, 2016. Tr. 32. While a customer is enrolled in CRP, the customer pays a bill based on their income and number of people in the household. Tr. 32. While on CRP, the Complainant paid \$134.09 per month for gas utility service. Tr. 32; PGW Exh. 1. After a customer is removed from CRP, the customer is billed based on the actual gas usage at the property. Tr. 32, 36.

The Complainant has not presented any evidence that her bills are too high, other than her own testimony. “Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Ass’n of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). The Complainant has not established a *prima facie* case in this matter. The Complainant did not contend that the meter was malfunctioning. The Service Address is a duplex with two gas stoves and two gas house heaters

which are attached to one meter. The Complainant's usage appears to be in line with seasonal usage.

Also, the Complainant had been enrolled in CRP which offers a reduced bill based on income and number of people in the household and not on actual usage. Once the Complainant was removed from CRP in August 2016, she was being billed on her actual usage at the Service Address rather than the reduced amount. The Complainant did not meet her burden to establish that her billing was incorrect as she showed no evidence that there was a change in the billing or a meter malfunction. Further, the Company indicated that the usage at the Service Address was in line with seasonal usage. Based on the above, there does not appear to be any issues with the Complainant's billing and she has failed to meet her burden of proof in this regard.

Request for Payment Arrangement

The Complainant also requests a payment arrangement for her outstanding balance. 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. Section 1405(a) of the Public Utility Code reads as follows:

§ 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.

66 Pa.C.S. § 1405(a).

However, Section 1405(d) of the Public Utility Code prohibits the Commission from establishing a second or subsequent payment arrangement if the customer has defaulted on a Commission-issued payment arrangement, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level is greater than 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

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

The Complainant resides at the Service Address alone. Tr. 11. The Complainant works full time at Delaware Valley Veterans Home. Tr. 10. The Complainant receives an hourly wage of \$18.50 per hour. Tr. 10. The Complainant works 40 hours per week. Tr. 11. The Complainant's current gross household income of \$3,207.00 per month with one household member places the household at 302% of the Federal Poverty guidelines. This makes the Complainant a Level 4 customer. *See* 66 Pa.C.S. § 1405(b)(4)⁴.

However, in this instance, the Complainant was granted a Commission-issued payment arrangement by BCS decision at Case No. 3651858 on September 17, 2018, which was

⁴ “(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.”

broken on December 15, 2018. Tr. 38; PGW Exh. 2. Under the BCS case, the Complainant reported an income of \$3,107.87 per month for one household member. PGW Exh. 2. The Complainant was granted a Level 4 payment arrangement of \$235.00 Budget Billing + \$540.00 Arrears = \$775.00 per month. Tr. 38-39; PGW Exh. 2. The Complainant has had six Company-issued payment arrangements, in October 2011, November 2011, October 2016, November 2017, January 2018, and June 2018; all of which have been broken or cancelled. Tr. 38; PGW Exh. 2. The Complainant's current account balance is \$4,074.59. Tr. 37; PGW Exh. 1.

The Complainant's gross household monthly income has increased since the previous Commission-issued payment arrangement. The Complainant's income has gone from \$3,107.87 per month at the time of the BCS decision to \$3,207.00 per month at the time of the hearing in this proceeding. Thus, the Complainant does not meet the "change of income" criteria set out in Section 1403 of the Public Utility Code. The Complainant has income greater than 200% of the Federal Poverty Level at 302% of the Federal Poverty Level and has not experienced a decrease in income of 20% or more. *See* 66 Pa.C.S. § 1403.

The Complainant did not present any evidence that would meet any of the "significant change in circumstance" criteria that is enumerated in Section 1403 of the Public Utility Code. First, the Complainant's income is greater than 300% of the Federal Poverty Guidelines, thereby making her ineligible for an extension pursuant to Section 1403. Second, even Complainant's income was below 300% of the Federal Poverty Guidelines, the Complainant did not present any evidence to support any of the four criteria defined as a "significant change in circumstance." While the Complainant discussed some health issues⁵, it appears that these were ongoing issues that the Complainant has dealt with for a while. Tr. 15-16. Further, the Complainant is simply seeking more favorable payment arrangement terms than the one she previously received from the Commission, but the Commission is constrained by the terms of the Public Utility Code.

⁵ The Complainant has had three medical certifications on the current balance. Tr. 40. Thus, the Complainant has exhausted her medical certifications as a customer is entitled to two renewals of a medical certificate on the same set of arrears. *See* 52 Pa.Code § 56.114(2).

Based on all of the above, the Complainant's request for a payment arrangement must be denied and the Complaint must be dismissed in this regard. Further, the Complainant is not eligible for reinstatement of her prior Commission payment arrangement.

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. The burden of proof for "high bill" complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), 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.

5. "Mere bald assertions ... do not constitute evidence." *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

6. The Complainant has not met her burden of demonstrating that her bills were incorrect.

7. 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.

8. Section 1405(d) of the Public Utility Code prohibits the Commission from establishing more than one payment arrangement unless there is a change in income. 66 Pa.C.S. § 1405(d).

9. Under Section 1403, a “change in income” is defined as a decrease in household income of 20% or more if the customer's household income level is greater than 200% of the Federal poverty level. 66 Pa.C.S. § 1403.

10. 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 caused by a significant change in circumstance. 66 Pa.C.S. § 1405(e).

11. The Complainant has not met her burden of establishing that she is eligible for a second Commission-issued payment arrangement or reinstatement of her prior Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Nneka Burnett against Philadelphia Gas Works, at Docket No. F-2019-3014890, is denied and dismissed.

2. That the docket at Docket No. F-2019-3014890 be closed.

Dated: April 29, 2020

_____/s/_____
Marta Guhl
Administrative Law Judge