

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Helen Preston Pelzer	:	
	:	
v.	:	F-2020-3016431
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This initial decision finds that the Complainant has failed to meet her burden of proof that the Respondent violated the Public Utility Code, Commission regulations or order with respect to her account billing. This decision also denies the Complainant’s request for a second or subsequent payment arrangement or reinstatement of her prior one.

HISTORY OF THE PROCEEDING

On January 21, 2020, Helen Preston Pelzer (Complainant or Ms. Pelzer) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent).¹ In the Complaint, Ms. Pelzer indicated that the utility was threatening to shut off her service, that there were incorrect charges on her bill and requested a payment arrangement. Specifically, the Complainant alleged that PGW transferred charges from a tenant at another address to her home account.

¹ This formal Complaint is a timely appeal from a decision of the Bureau of Consumer Services (BCS) dated November 27, 2019 at BCS No. 3680187. Pursuant to 52 Pa. Code 56.173(a), review of a BCS decision is *de novo*.

On February 11, 2020, PGW filed an Answer, denying the material allegations of the Complaint.

On February 13, 2020, a Hearing Notice was issued for an initial in person hearing on Wednesday, March 18, 2020, at 10:00 a.m., and the matter was assigned to me. I issued a Prehearing Order on February 14, 2020.²

By Hearing Notice dated March 16, 2020, the matter was rescheduled for a hearing on April 15, 2020, at 10:00 a.m.

On April 23, 2020, a Telephonic Hearing Cancellation/Reschedule Notice was issued which cancelled the April 15, 2020 hearing and rescheduled the matter for Wednesday, June 3, 2020 at 10:00 a.m.³

On May 14, 2020, a Telephonic Hearing Cancellation/Reschedule Notice was issued which cancelled the hearing scheduled on June 3, 2020 and rescheduled the matter for Thursday, July 2, 2020, at 10:00 a.m.⁴ I issued a second Prehearing Order on May 18, 2020.

The hearing convened as scheduled on July 2, 2020. The Complainant represented herself and testified on her own behalf. PGW was represented by counsel, Laureto Farinas, Esquire. PGW also presented the testimony of Jessica Antonetti, a customer review officer, and offered five exhibits which were entered into the record.

The record closed on July 8, 2020, when the 39-page electronic hearing transcript was received.

² The hearing on March 18, 2020 was rescheduled due to the Governor's Emergency Order related to the COVID-19 pandemic. The Commission's offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 pandemic. However, the Commission has continued working remotely.

³ The hearing on April 15, 2020 was cancelled and rescheduled due to the ongoing pandemic and the closure of Commission offices.

⁴ The hearing on June 3, 2020 was rescheduled due to a conflict in the presiding officer's schedule.

FINDINGS OF FACT

1. The Complainant is Helen Preston Pelzer, who lives at 2633 Island Avenue, Philadelphia, Pennsylvania 19153 (Service Address). Tr. 7.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant also owns 1252 Greylock Street, Philadelphia, Pennsylvania 19143, which was a rental property but is not currently used as a rental. Tr. 8.
4. The Complainant works full-time at the hourly rate of \$20.00 per hour and works 35 hours per week. Tr. 10-11.
5. There are four people in the Complainant's household, including two children, ages 6 and 3 years old, and one adult relative. Tr. 11.
6. The adult relative is not currently working and has no sources of income. Tr. 11.
7. The Complainant's household does not have any other sources of income. Tr. 12.
8. The Complainant's current gross household income of \$3,033.33⁵ per month with four household members places the household at 139% of the Federal Poverty guidelines.⁶
9. On June 27, 2014, the Complainant contacted PGW to place the gas utility service in her name at 1252 Greylock Street as of July 2014. Tr. 13, 28; PGW Exh. 2.

⁵ Monthly income is calculated as follows: \$700.00 (\$20 x 35 hrs) x 52 = \$36,400 / 12 = \$3,033.33.

⁶ *Federal Register*, Vol. 85, No. 12, pp. 3060-3061 (January 17, 2020). See <http://aspe.hhs.gov/poverty>.

10. On May 9, 2017, the Complainant contacted PGW to cancel gas service at 1252 Greylock Street. Tr. 28; PGW Exh. 2.

11. The Complainant had gas service in her name at 1252 Greylock Street from July 2014 to May 2017. Tr. 25; PGW Exh. 1.

12. An outstanding account balance from 1252 Greylock Street, from the time period of July 2014 to May 2017, was transferred to the Complainant's 2633 Island Avenue account on June 28, 2017 in the amount of \$2,197.32. Tr. 7, 26; PGW Exh. 1.

13. According to PGW records, there was another account for 1252 Greylock Street in the name of Lucinda Warner from March 17, 2010 to May 6, 2013. Tr. 29; PGW Exh. 5.

14. There was an outstanding balance from Ms. Warner's account at Greylock Street. Tr. 29; PGW Exh. 5.

15. The outstanding balance from Ms. Warner's account at Greylock Street was not transferred to the Complainant's account at 2633 Island Avenue. Tr. 29.

16. The Complainant's current balance on her account is \$3,896.20, which includes the transferred balance in the Complainant's name from July 2014 to May 2017 from 1252 Greylock Street and charges from 2633 Island Avenue. Tr. 31; PGW Exh. 1.

17. The Complainant has had three Company-issued payment arrangements, all of which were broken. Tr. 30; PGW Exh. 3.

18. The Complainant had a payment arrangement issued by the Bureau of Consumer Services (BCS) at BCS Case No. 3482440 on October 7, 2016 for the balance at 1252 Greylock Street. Tr. 30-31; PGW Exhs. 3 & 4.

19. The Complainant received a Level 2 payment arrangement at BCS Case No. 3482440 in the amount of \$62.00 for budget billing plus \$17.00 for arrears for a total of \$79.00. PGW Exh. 4.

20. The Complainant was also issued a payment arrangement by BCS at BCS Case No. 3465253 on October 11, 2016 for her balance at the Service Address. PGW Exh. 4.

21. The Complainant received a Level 1 payment arrangement at BCS Case No. 3465253 in the amount of \$91.00 for budget billing plus \$15.00 for arrears for a total of \$106.00. PGW Exh. 4.

22. The BCS Decision at Case No. 3465253 was based on a monthly income of \$1,300.00 for a five-member household. PGW Exh. 4.

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 Tel. 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).

Balance Transferred from Rental Property

The Complainant alleged that a balance was improperly transferred from another property to her current account at 2633 Island Avenue. The Complainant asserted that the balance was from a tenant that rented the property. The Company maintained that balance was from the property during the time period that the Complainant had gas service in her name.

As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S. § 1501, provides, in relevant part:

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.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa.Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

Id. at 949 (footnote omitted).

The statutory definition of "service" is to be broadly construed.⁷ *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PGW's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

The Complainant contends that the balance from 1252 Greylock Street was improperly transferred to her account at 2633 Island Avenue. However, the Complainant did not present any evidence beyond her own testimony that this took place. It is well settled, "[m]ere bald assertions ... do not constitute evidence." *Mid-Atlantic Power Supply Assoc. of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000)(citing *Pa. Bureau of Corrs. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); see also, *Steffy's Pattern Shop v. Frontier Communications of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

⁷ "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.

Further, under the Commission's regulations, a public utility may transfer an unpaid balance to another account for the same customer in the event that service is discontinued at a residence or dwelling. 52 Pa.Code § 56.16(b).

As background, the Complainant lives at 2633 Island Avenue, Philadelphia, Pennsylvania 19153. Tr. 7. The Complainant also owns 1252 Greylock Street, Philadelphia, Pennsylvania 19143, which was a rental property but is not currently used as a rental. Tr. 8. At a point in time, the Complainant rented the property to Lucinda Warner. Tr. 12-13.

PGW's witness, Ms. Antonetti, testified that on June 27, 2014, the Complainant contacted PGW to place the gas utility service in her name at 1252 Greylock Street as of July 2014. Tr. 13, 28; PGW Exh. 2. On May 9, 2017, the Complainant contacted PGW again to cancel gas service at 1252 Greylock Street. Tr. 28; PGW Exh. 2. Ms. Antonetti noted that the Complainant had gas service in her name at 1252 Greylock Street from July 2014 to May 2017. Tr. 25; PGW Exh. 1. An outstanding account balance from 1252 Greylock Street for the time period from July 2014 to May 2017 was transferred to the Complainant's account at the Service Address on June 28, 2017 in the amount of \$2,197.32. Tr. 7, 26; PGW Exh. 1.

Ms. Antonetti also testified that PGW records indicate that there was an account for 1252 Greylock Street in the name of Lucinda Warner from March 17, 2010 to May 6, 2013. Tr. 29; PGW Exh. 5. There was an outstanding balance from Ms. Warner's account at Greylock Street. Tr. 29; PGW Exh. 5. However, according to Ms. Antonetti, the outstanding balance from Ms. Warner's account at Greylock Street was not transferred to the Complainant's account at the Service Address. Tr. 29. Ms. Antonetti noted that the Complainant's current balance on her account is \$3,896.20, which includes the transferred balance from 1252 Greylock Street and charges from the Service Address. Tr. 31; PGW Exh. 1.

In this matter, the Company presented testimony and evidence that it properly transferred a balance from 1252 Greylock Street to the Complainant's account at the Service Address. The Company presented evidence that the Complainant had service in her name at the Greylock Street address from July 2014 to May 2017 and that it transferred the balance that

accrued during that time period to the Complainant's account at the Service Address after she discontinued service at 1252 Greylock Street. While there was an outstanding balance from the Complainant's tenant, Ms. Warner, the Company indicated that this balance was never transferred to the Complainant's account at the Service Address. There is nothing in the record to support the Complainant's allegations that the outstanding balance was improperly transferred to her account at the Service Address, since this balance was from a time period when she had service in her name at the Greylock Street address. As such, the Complainant's Complaint in this regard must be dismissed.

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 10%

or more if the customer's household income level is 200% or less 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 with two children, ages 6 and 3 years old, and one adult relative. Tr. 11. The Complainant works full-time at the hourly rate of \$20.00 per hour and works 35 hours per week. Tr. 10-11. The adult relative is not currently working and has no other sources of income. Tr. 11. The Complainant's household does not have any other sources of income. Tr. 12. The Complainant's current gross household income of \$3,033.33 per month with four household members places the household at 139% of the Federal Poverty guidelines. This makes the Complainant a Level 1 customer. *See* 66 Pa.C.S. § 1405(b)(1)⁸.

However, in this instance, the Complainant had a payment arrangement issued by the BCS at BCS Case No. 3482440 on October 7, 2016, for the balance at 1252 Greylock Street. Tr. 30-31; PGW Exhs. 3 & 4. The Complainant received a Level 2 payment arrangement in the

⁸ "(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level."

amount of \$62.00 for budget billing plus \$17.00 for arrears for a total of \$79.00. PGW Exh. 4. The Complainant was also issued a payment arrangement by BCS at Case No. 3465253 on October 11, 2016 for her balance at the Service Address. PGW Exh. 4. The Complainant received a Level 1 payment arrangement in the amount of \$91.00 for budget billing plus \$15.00 for arrears for a total of \$106.00. PGW Exh. 4. The BCS Decision at Case No. 3465253 was based on a monthly income of \$1,300.00 for a five-member household. PGW Exh. 4. The Complainant's current balance on her account is \$3,896.20, which includes the transferred balance from 1252 Greylock Street and charges from the Service Address. Tr. 31; PGW Exh. 1. The Complainant broke both payment arrangements. PGW Exh. 1.

The Complainant's gross household monthly income has increased since the previous Commission-issued payment arrangement. 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 less than 200% of the Federal Poverty Level at 139% of the Federal Poverty Level and has not experienced a decrease in income of 10% 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. Further, the Complainant is simply seeking more favorable payment arrangement terms than the one she previously received from the Commission. However, the Commission is constrained by the terms of the Public Utility Code. 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 Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate service.

5. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995).

6. Under the Commission's regulations, a public utility may transfer an unpaid balance to another account for the same customer in the event that service is discontinued at a residence or dwelling. 52 Pa.Code § 56.16(b).

7. The Complainant has not met her burden of establishing that Respondent violated the Public Utility Code, Commission regulations or order with respect to her account billing.

8. 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.

9. 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).

10. Under Section 1403, a “change in income” is defined as 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.

11. 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).

12. 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 Helen Preston Pelzer against Philadelphia Gas Works, at Docket No. F-2020-3016431, is denied and dismissed.

2. That the docket at Docket No. F-2020-3016431 be closed.

Dated: October 15, 2020

_____/s/
Marta Guhl
Administrative Law Judge