

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Florence Ackridge	:	
	:	
v.	:	C-2022-3035899
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complainant’s Formal Complaint in part because she failed to sustain her burden of proof to establish that Philadelphia Gas Works violated any Commission orders or regulations concerning charges on her bill. However, the decision grants the Complainant's request for a payment arrangement.

**HISTORY OF THE PROCEEDING**

On October 5, 2022, Florence Ackridge (Complainant or Ms. Ackridge) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that there were incorrect charges on her bills, that the utility was threatening to shut off or had shut off her service, and she also requested a payment arrangement.

On October 27, 2022<sup>1</sup>, the Respondent filed an Answer denying the material allegations of the Complaint.

On November 9, 2022, a Hearing Notice was issued which indicated an initial hearing was scheduled in the matter for January 12, 2023, at 10:00 a.m., and assigned to me. I issued a Prehearing Order on December 13, 2022.

The hearing took place as scheduled on January 12, 2023. The Complainant appeared *pro se* and testified on her own behalf at the hearing. The Complainant also presented eight exhibits at the hearing which were entered into the record at the time of the hearing. PGW was present and represented by Graciela Christlieb, Esq. who presented the testimony of one witness, Jessica Glace. The Respondent offered nine exhibits at the hearing.

During the course of the hearing, Ms. Ackridge indicated that she had not received PGW's hearing exhibits. PGW's counsel stated that she would send them to the Complainant via overnight carrier. I informed Ms. Ackridge that she would have until January 23, 2023, to submit any written objections to the exhibits to my office, and that PGW could respond to any objections by January 28, 2023. As of the date of this decision, the Complainant has not submitted any objections to PGW's hearing exhibits. As such, PGW Exhibit Nos. 1-9 are entered into the record through this decision.

The hearing resulted in a 69-page transcript. The record closed on February 15, 2023, when I received the hearing transcript.

### FINDINGS OF FACT

1. The Complainant in this case is Florence Ackridge, who resides at 6713 Gratz Street, Philadelphia, Pennsylvania 19126 (Service Address). Tr. 10-11.

2. The Respondent in this case is Philadelphia Gas Works.

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<sup>1</sup> The Complaint was served on the Respondent by the Secretary's Bureau on October 7, 2022.

3. The Complainant resides at the Service Address, which is a single-family home with four bedrooms and one and a half bathrooms. Tr. 12.

4. The Complainant resides at the Service Address alone. Tr. 13.

5. The Complainant has a gas house heater at the Service Address. Tr. 12.

6. The Complainant is retired. Tr. 56.

7. The Complainant receives \$1,700.00 per month in Social Security benefits. Tr. 56.

8. The Complainant also receives \$1,000.00 per month from a pension.<sup>2</sup> Tr. 57.

9. The Complainant's monthly income of \$2,700.00 per month for a household of one is 222% of the Federal Poverty guidelines.<sup>3</sup>

10. On March 17, 2021, a PGW technician visited the Service Address to investigate an alleged gas leak. Tr. 29-30; PGW Exh. 1.

11. The PGW technician performed all checks at the Service Address, no leaks were found, and left the gas on at the residence. Tr. 30; PGW Exh. 1.

12. On August 11, 2021, a PGW technician visited the Service Address to perform meter testing. Tr. 34; PGW Exh. 3.

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<sup>2</sup> The Complainant's monthly income is  $1,700 + 1,000 = 2,700$ .

<sup>3</sup> U.S. Federal Poverty Guidelines, 88 Fed. Reg. 12, 3424-25 (Jan. 19, 2023). *See*, <http://aspe.hhs.gov/poverty>.

13. The meter was exchanged and removed for testing and the gas was left on at the Service Address. Tr. 34; PGW Exh. 3.

14. The meter tested within acceptable levels and was accurate.<sup>4</sup> Tr. 35; PGW Exh. 4.

15. On November 1, 2021, a PGW technician visited the Service Address. Tr. 36; PGW Exh. 5.

16. The technician found the gas on but turned it off and issued a hazard tag because there was no water in the heating system. Tr. 37; PGW Exh. 5.

17. On November 10, 2021, a PGW technician visited the Service Address to perform a follow up inspection of the heating system. Tr. 36; PGW Exh. 5.

18. The technician found that the water issue was resolved and turned the gas back on but indicated that a repair was needed on a fitting to the house heater. Tr. 37; PGW Exh. 5.

19. On April 5, 2022, the Complainant submitted a dispute to PGW regarding her bills for gas service between November 17, 2021, and March 21, 2022, indicating that the house heater was not operational during that time and that a private contractor had shut off her gas supply to the residence. Tr. 39-41; PGW Exh. 6.

20. On May 2, 2022, PGW sent a letter to the Complainant indicating that she could have her meter tested and provided the information for that process. Tr. 39, 42-43; PGW Exh. 6.

21. The Complainant did not request a second meter test. Tr. 43.

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<sup>4</sup> No meter which has an error in registration of more than 2.0% fast or slow may remain in service. 52 Pa. Code § 59.21.

22. On May 20, 2022, the Complainant filed an informal Complaint with the Bureau of Consumer Services (BCS) disputing the charges. Tr. 43; PGW Exh. 7.

23. On July 12, 2022, BCS dismissed the Complainant's informal Complaint but indicated that she could contact the Company to have her meter tested, which she did not do. Tr. 44; PGW Exh. 7.

24. Between December 1, 2020, and January 5, 2023, the Complainant made six payments to her account with PGW. Tr. 45; PGW Exh. 9.

25. The Complainant's account balance as of the hearing date was \$4,271.39. which consists of unpaid bills and late payment charges. Tr. 46; PGW Exh. 9.

### 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.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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). A preponderance of the evidence is evidence 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). 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 Transp. 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 W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor*

*Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 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).

#### High Bill Dispute

The Complainant asserts that her bills were too high at the Service Address. She contends that her house heater was not operational for a period of time. 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 Co.*, 54 Pa.P.U.C. 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 Oct. 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 Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011) (holding that limiting the *Waldron* Rule to the three factors is too limiting).

The Complainant resides at the Service Address which is a single-family home with four bedrooms and one and a half bathrooms. Tr. 12. The Complainant resides at the Service Address alone. Tr. 13. The Complainant has a gas house heater at the Service Address. Tr. 12.

PGW's witness presented testimony on the Company's behalf. Ms. Glace indicated that on March 17, 2021, a PGW technician visited the Service Address to investigate an alleged gas leak. Tr. 29-30; PGW Exh. 1. The PGW technician performed all checks at the Service Address and left the gas on at the residence. Tr. 30; PGW Exh. 1. Ms. Glace also noted that on August 11, 2021, a PGW technician visited the Service Address to perform meter testing. Tr. 34; PGW Exh. 3. The meter was exchanged and removed for testing and the gas was left on at the Service Address. Tr. 34; PGW Exh. 3. Meter testing indicated that the meter tested within acceptable levels and was accurate. Tr. 35; PGW Exh. 4.

Ms. Glace also noted that on November 1, 2021, a PGW technician visited the Service Address. Tr. 36; PGW Exh. 5. The technician found the gas on but turned it off and issued a hazard tag because there was no water in the heating system. Tr. 37; PGW Exh. 5. Shortly thereafter, on November 10, 2021, a PGW technician visited the Service Address to

perform a follow up inspection of the heating system. Tr. 36; PGW Exh. 5. The technician found that the water issue was resolved and turned the gas back on but indicated that a repair was needed on a fitting to the house heater. Tr. 37; PGW Exh. 5.

Further, the evidence indicates that on April 5, 2022, the Complainant submitted a dispute to PGW regarding her bills for gas service between November 17, 2021, and March 21, 2022, indicating that the house heater was not operational during that time and that a private contractor had shut off her gas supply to the residence. Tr. 39-41; PGW Exh. 6. On May 2, 2022, PGW sent a letter to the Complainant indicating that she could have her meter tested and provided the information for that process. Tr. 39, 42-43; PGW Exh. 6. The Complainant did not request a second meter test. Tr. 43. On May 20, 2022, the Complainant filed an informal Complaint with BCS again disputing the charges. Tr. 43; PGW Exh. 7. However, on July 12, 2022, BCS dismissed the Complainant's informal Complaint but indicated that she could contact the Company to have her meter tested, which she did not do. Tr. 44; PGW Exh. 7.

The Complainant has not presented any evidence that her bills are too high, other than her own opinions. "Mere bald assertions ... do not constitute evidence." *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); see also, *Steffy's Pattern Shop v. Frontier Commc'n of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000). While Ms. Ackridge testified that the house heater was not operational from November 2021 to March 2022, PGW records indicate that the Company left the gas on at its last visit to the Service Address on November 10, 2021, and that the house heater was operational. There are no other records that indicate that the Complainant's gas was turned off by PGW any time after that point. Further, PGW provided the Complainant with meter testing when she requested it in August, 2021 and the Complainant was provided with an opportunity to have another meter test performed after that but the Complainant did not avail herself of that service. Ms. Glace indicated that the Complainant's outstanding balance was due to a combination of unpaid bills and late payment charges. Tr. 46; PGW Exh. 9. 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. § 1401-19. (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).

The Complainant is retired and resides alone. Tr. 56. The Complainant receives \$1,700.00 per month in Social Security benefits. Tr. 56. The Complainant also receives \$1,000.00 per month from a pension. Tr. 57. The Complainant's monthly income of \$2,700.00 per month for a household of one is 222% of the Federal Poverty guidelines. The Complainant has a balance of \$4, 271.39 and the Complainant may be entitled to a payment arrangement on that amount.

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 should 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. *Hewitt v. PECO Energy Co.*, Docket No. F-20112273271 (Opinion and Order entered Sept. 12, 2013), *Dorsey v. Phila. Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered Nov. 22, 2013).

In the present case, the Complainant has not received a prior Commission-issued payment arrangement. Based on her household income, she is a Level 2 customer.<sup>5</sup> While the Complainant's payment history is poor, it appears that Ms. Ackridge is willing to work to reduce her outstanding balance. As such, the Complainant's request for a Commission-issued payment arrangement is granted.

### CONCLUSIONS OF LAW

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

2. 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 Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

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

5. The Complainant has not met her burden of demonstrating that her bills were incorrect. 66 Pa.C.S. § 332(a).

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<sup>5</sup> A customer with a household income level exceeding 150% and not more than 250% of the Federal poverty level may be entitled to a payment arrangement of three years. 66 Pa.C.S. § 1405(b)(2).

6. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401-19 (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

7. The Commission should 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. *Hewitt v. PECO Energy Co.*, Docket No. F-20112273271 (Opinion and Order entered Sept. 12, 2013), *Dorsey v. Phila. Gas Works*, Docket No. F-2012-2313679 (Opinion and Order entered Nov. 22, 2013).

8. The Complainant has met her burden of establishing that she is eligible for a Commission-issued payment arrangement. 66 Pa.C.S. §§ 332(a), 1401-19.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Philadelphia Gas Works' Exhibit Nos. 1 through 9 are entered into the record in this proceeding.

2. That the Complaint of Florence Ackridge in *Florence Ackridge v. Philadelphia Gas Works* at Docket No. C-2022-3035899 is dismissed in part with respect to her high bill dispute.

3. That the Complaint of Florence Ackridge in *Florence Ackridge v. Philadelphia Gas Works* at Docket No. C-2022-3035899 is sustained in part with respect to her request for a Commission-issued payment arrangement.

4. That within 30 days of entry of the final Commission Order in this matter, Philadelphia Gas Works will calculate the Complainant's balance and the 1/36th payment due each month with the monthly bill payment and issue written notice to the Complainant.

5. That beginning with the first billing due date following the entry of a final Commission Order in this matter, Florence Ackridge shall make monthly payments consisting of her monthly budget bill plus one-thirty-sixth (1/36th) of the balance accrued on her account, continuing thereafter on the due date for the payment of each regular monthly bill, until the arrearage on her account has been paid in full.

6. That as long as Florence Ackridge keeps the payment schedule stated in this order and timely pays her monthly bill plus 1/36th of the balance accrued, Philadelphia Gas Works shall not suspend or terminate her utility service except for valid safety or emergency reasons or assess late payments or finance charges against her account.

7. That the record at Docket No. C-2022-3035899 be marked closed.

Date: May 15, 2023

\_\_\_\_\_/s/  
Marta Guhl  
Administrative Law Judge