

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terria Wilks	:	
	:	C-2023-3042340
v.	:	
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s Formal Complaint 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. The Complainant also failed to meet her burden of establishing that she was entitled to a second Commission-issued payment arrangement because she defaulted on a prior Commission-issued payment arrangement and has not experienced a change in income.

HISTORY OF THE PROCEEDING

On August 21, 2023, Terria Wilks (Complainant or Ms. Wilks) filed a Formal Complaint (Complaint) with the Commission against Philadelphia Gas Works (Respondent or PGW) alleging incorrect or over billing by PGW and requesting a payment agreement. She also indicated that PGW had or was threatening to shut off her service.

PGW filed its Answer to the Formal Complaint on September 11, 2023, in which it averred that the Complainant had been granted multiple PGW-issued payment agreements

which had not been satisfied, and that she also had two broken PUC-issued payment agreements. PGW requested that the Formal Complaint be dismissed, and the Complainant denied relief.

By Hearing Notice dated September 27, 2023, a telephonic hearing was scheduled for November 8, 2023, and the matter was assigned to me.

A Prehearing Order was issued on October 4, 2023, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The hearing was held as scheduled on November 8, 2023. Complainant represented herself and presented no exhibits. PGW was represented by Anita Murray, Esq., who presented one witness, PGW Customer Review Unit Officer David Kauffman. Attorney Murray introduced the following exhibits:

- PGW1 – Service Agreement
- PGW 1-A – Statement of Account
- PGW2 – Complainant’s Payment History
- PGW3 – Informal Case Number 3796411
- PGW4 – PGW Initial Decision
- PGW5 – Final Order

All exhibits were admitted into the record.

The record closed on December 12, 2023, upon receipt of the final transcript.

FINDINGS OF FACT

1. The Complainant is Terria Wilks.
2. The Respondent is Philadelphia Gas Works.

3. On March 3, 2015, the Complainant filed a Formal Complaint against PGW which was docketed at Docket No. F-2015-2471533 (2015 Complaint) and assigned to Administrative Law Judge (ALJ) Darlene Heep.

4. In the 2015 Complaint, the Complainant alleged, *inter alia*, that there were incorrect or high charges on bills for gas service issued to her by PGW. 2015 Complaint ¶¶ 4, 5.

5. On July 27, 2015, ALJ Heep issued an Initial Decision (2015 ID) dismissing the 2015 Complaint, finding that: (a) the Complainant's claims relating to bills from and before 2009 were barred by the statute of limitations; and (b) the Complainant failed to establish a *prima facie* case for any such claims after 2009. 2015 ID at 6, 8.

6. Complainant did not file Exceptions to the 2015 Initial Decision.

7. By Final Order entered on October 2, 2015, the Commission informed the parties that, in accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa.C.S. §332(h), the 2015 ID had become final without further Commission action.

8. The Commission's Final Order in the 2015 Complaint proceeding has not been set aside, annulled, or otherwise overturned.

9. The Complainant resides in a house at 7545 Sherwood Road, Philadelphia, PA (Service Address) with her 14-year-old son. Tr. 11, 16-17.

10. The Complainant is employed by AmeriHealth Caritas as a Provider Enrollment Specialist. Tr. 17.

11. The Complainant works 40 hours per week and earns \$24.33 per hour; she is paid bi-weekly, meaning she is paid 26 times per year. Tr. 19.

12. The Complainant's gross monthly wages are approximately \$4,217.20.¹
Tr. 19.

13. The Complainant received PGW-issued payment agreements on
March 17, 2008, and April 2, 2012. Tr. 30; PGW Exh. 2.

14. The Complainant defaulted on both PGW-issued payment agreements.
Tr. 30; PGW Exh. 2.

15. The Complainant received a Commission-issued payment arrangement
under Bureau of Consumer Services (BCS) Decision No. 3594648 on May 25, 2018. Tr. 31.
PGW Exh. 2.

16. The Complainant defaulted on the Commission-issued payment
arrangement granted under BCS Decision No. 3594648 due to nonpayment. Tr. 31; PGW Exh.
2.

17. On July 27, 2021, the Complainant filed an informal complaint requesting
a Commission-issued payment arrangement for an arrearage of \$9,906.23, which was docketed
as BCS Case No. 3796411. Tr. 31; PGW Exh. 3.

18. In July 2021, the Complainant reported that her household consisted of
one adult and one 11-year-old child, and that the monthly household income consisted of wages
in the amount of \$3,666. Tr. 33; PGW Exh. 3.

19. On August 20, 2021, under BCS Decision No. 3796411, the Complainant
received a Commission-issued payment arrangement which provided for \$107.00 budget billing

¹ The Complainant's gross monthly wages were calculated as follows: $\$24.33 \times 40 = \973.20 weekly, multiplied by 52 weeks per year equals \$50,606.40 annually. That amount divided by 12 months per year = \$4,217.20 per month. The Complainant testified that occasionally, when necessary to complete a task, she works slightly more than 40 hours a week; however, overtime is not available in her current position. Tr. 43-44.

plus \$166.00 on the arrears for 60 months, with the first payment due on the PGW payment due date in October 2021. PGW Exh. 3.

20. The Complainant made only three of the 60 payments due under the 2021 Commission-issued payment arrangement. PGW Exh. 1A.

21. The Complainant defaulted on the 2021 Commission-issued payment arrangement granted under BCS Decision No. 3796411 due to nonpayment. Tr. 31; PGW Exh. 1A, 3.

22. From September 18, 2020 through November 1, 2023, the Complainant made four payments on her account. Tr. 27-29; PGW Exh. 1 and 1A.

23. The last payment made by the Complainant on her account was a payment of \$273.00 made on December 15, 2021. Tr. 27-29; PGW Exh. 1 and 1A.

24. On August 24, 2022, the Complainant's account was credited with grants in the aggregate amount of \$5,648.49. Tr. 28-29; PGW Exh. 1 and 1A.

25. Complainant did not make consistent payments on her PGW account. Tr. 55.

26. As of October 31, 2023, the Complainant's current account balance was \$5,928.72. Tr. 25; 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, 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. Sub. 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 (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 & 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 Pub. Welfare, White Haven Ctr.*, 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).

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

In the Complaint, the Complainant asserts that she has a "huge bill" that has "followed her" for years due to being incorrectly charged in the past. Complaint ¶6. At the hearing, she also testified that she felt that she was "charged . . . very high prices that I felt like

for the square footage of the home. It was not correct.” Tr. 13. In analyzing the Complainant’s high billing claims, it is helpful to distinguish between two time periods, i.e., before and after the filing of the 2015 Complaint.

In her 2015 Complaint, Ms. Wilks raised concerns about improper or high billing. In that case, Ms. Wilks contended that her balance is high because she was overcharged for PGW service. 2015 ID at 5. The matter was fully litigated, and an evidentiary hearing was held on June 2, 2015.

On July 27, 2015, ALJ Heep issued the 2015 ID, which dismissed the 2015 Complaint, finding that: (a) the Complainant’s claims relating to bills from and before 2009 were barred by the statute of limitations; and (b) the Complainant failed to establish a *prima facie* case for any improper or high billing claims arising thereafter. 2015 ID at 6, 8.

Complainant did not file Exceptions to the 2015 ID. By Final Order entered October 2, 2015, the Commission informed the parties that the decision of ALJ Heep had become final without further Commission action in accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa.C.S. §332(h). The Commission’s Final Order in the 2015 Complaint proceeding has not been set aside, annulled, or otherwise overturned.

Section 316 of the Code precludes a collateral attack upon a Commission order which has not been reversed upon appeal. 66 Pa.C.S. § 316. *See Howell v. Phila. Gas Works*, Docket No. C-2016-2568426 (Opinion and Order entered May 2, 2017).

As noted above, the Complaint filed in this proceeding may be read to include improper or high billing after the filing of the 2015 Complaint.² The burden of proof for “high

² See Complaint ¶ 6, in which Ms. Wilks states “have a huge bill that has followed me for years due to being incorrectly charged in the past.” In her testimony, Ms. Wilks reiterated her contention that she had been overcharged between 2007 and 2009. Tr. 13.

bill” complaints has been explained in *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), and its progeny.³

Ms. Wilks did not provide any testimony that would clarify the date, duration, or amount of any such improper or overbilling after the filing of the 2015 Complaint, nor did she provide any documentary evidence that would support such a claim. Tr. 12-13. Thus, Ms. Wilks failed to establish a *prima facie* case of any overbilling after the filing of the 2015 Complaint on March 3, 2015 and any such claim will be dismissed.

Request for a Commission-issued Payment Arrangement

The Complainant also requests a payment arrangement in this matter. PGW contends that the Complainant is not entitled to a payment arrangement due to her poor payment history and the fact that the Complainant defaulted on two prior Commission-issued payment arrangements and several PGW-issued payment agreements.

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

³ The Commission explained the burden of proof set forth in *Waldron* as follows:

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.*”

Thomas v. PECO Energy Co., Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011) (emphasis added).

follow in handling payment arrangement requests. 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 also provides that 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).

The Complainant received a Commission-issued payment arrangement on August 20, 2021 which provided for \$107.00 budget billing plus \$166.00 on the arrears for 60 months. PGW Exh. 3. While requesting the Commission-issued payment arrangement in 2021, the Complainant reported: (a) a household size of two, consisting of one adult and an 11-year-old child; and (b) monthly wages of \$3,666. The Complainant defaulted on the BCS issued payment arrangement. Tr. 31; PGW Exh. 3.

Currently, the Complainant resides at the Service Address with her 14-year-old son. Tr. 11, 16-17. The Complainant is employed by AmeriHealth Caritas as a Provider Enrollment Specialist. Tr. 17. Although she testified that she had changed her position with AmeriHealth Caritas since August 2021 when the last Commission-issued payment arrangement was granted, Ms. Wilks testified that her income had increased since that date.⁴ Tr. 46.

⁴ Ms. Wilks provided somewhat vague, inconsistent testimony as to her current earnings. As noted above, calculating her monthly earnings based on her hourly wage, she earns \$4,217.20 monthly. When requesting the payment arrangement, the Complaint reported income of \$4,049.07. Tr. 37. At the hearing, the Complainant

In addition, the record indicates that the Complainant did not make consistent payments on her account. PGW Exh. 1. The Complainant last made a payment on her account on December 15, 2021, that is approximately two years ago in the amount of \$273 when her balance was \$4,409.64. Tr. 29; PGW Exh. 1 and 1A. The Complainant's current account balance is \$5,928.72. Tr. 25; PGW Exh. 1. Finally, due to nonpayment, the Complainant defaulted on payment agreements issued to her by PGW on March 17, 2008 and April 2, 2012. Tr. 30; PPL Exh. 2.

The Complainant has failed to demonstrate that she is eligible for another Commission-issued payment arrangement.

While the Complainant is not eligible for a second Commission-issued payment arrangement, a provision of the Act provides that the Commission may reinstate and extend a previously ordered payment arrangement in limited circumstances where the customer has defaulted on that payment arrangement. Specially, Section 1405(e) provides:

(e) Extension of payment arrangements.--If the customer defaults on a payment arrangement . . . 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. . . .

66 Pa.C.S. § 1405(e) (emphasis added). Further, “significant change in circumstance” is defined as the following:

“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.

testified that she had changed her position and could no longer earn overtime, suggesting that she did not earn over \$4,000 per month. Tr. 43-44. However, during the hearing the Complainant stated that she has monthly income of \$3,911. Tr. 18. In her testimony, the Complainant agreed that her current monthly income is greater than the monthly \$3,666 she reported in August 2021. Tr. 46.

- (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.

Ms. Wilks' current gross annual household income of \$50,606.40 for a household of two is less than 300% of the Federal poverty level.⁵ Thus, Ms. Arthurs is eligible for reinstatement and extension of her 2021 Commission-issued payment arrangement if she defaulted on said arrangement as a result of at least one of the four prongs of the definition above. None of these prongs are applicable. There is no evidence in the record that the Complainant defaulted on her 2021 Commission-issued payment arrangement as the result of the onset of a chronic or acute illness, catastrophic damage to her residence, or loss of residence. Further, there was no increase in Complainant's number of dependents in the household.

Here, the Complainant has failed to demonstrate that she is eligible for another Commission-issued payment arrangement or reinstatement and an extension of her 2021 Commission-issued payment arrangement. Accordingly, the Complainant's request for a payment arrangement must be denied.

CONCLUSIONS OF LAW

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

⁵ See Federal poverty guidelines, 88 Fed. Reg. 3424 (Jan. 19, 2023); *Also available at* <http://aspe.hhs.gov/poverty> (providing that a gross annual income of less than \$59,160 for a household of two is below 300% of the Federal poverty level).

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

4. Whenever the Commission shall make any rule, regulation, finding, determination or order, the same shall be prima facie evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review. 66 Pa.C.S § 316; *Howell v. Phila. Gas Works*, Docket No. C-2016-2568426 (Opinion and Order entered May 2, 2017).

5. A complainant may 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. *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (1980).

6. 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).

7. The Commission may only reinstate and extend a previously ordered payment where the customer has defaulted on that previous payment arrangement due to a significant change in circumstance. 66 Pa.C.S. §§ 1403, 1405(e).

8. Complainant failed to meet her burden of proof in regard to her claims in this proceeding. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Terria Wilks against Philadelphia Gas Works at Terria Wilks v. Philadelphia Gas Works, Docket No. C-2023-3042340 is denied and dismissed.
2. That Docket No. C-2023-3042340 is marked closed.

Date: March 8, 2024

/s/
Arlene Ashton
Administrative Law Judge