

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anna M. Smith

v.

Philadelphia Gas Works

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C-2023-3044268

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Complainant’s Formal Complaint because the Complainant has established that past charges were incorrectly included in order to reestablish service at her residence. However, the Initial Decision denies the Complainant’s request for a payment arrangement because she failed to establish that she is entitled to a second Commission-issued payment arrangement.

HISTORY OF THE PROCEEDING

On November 17, 2023, Anna M. Smith (Complainant or Ms. Smith) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent, or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that there were incorrect charges on her bills. She also indicated that her utility service was shut off and she wants to reestablish service. The Complainant requested a payment arrangement.

On December 8, 2023,¹ the Respondent filed an Answer denying the material allegations of the Complaint.

By Telephonic Hearing Notice dated December 18, 2023, an initial hearing was scheduled for February 29, 2024, at 10:00 a.m., and the matter was assigned to me.

On January 30, 2024, I issued a Prehearing Order which instructed the parties regarding procedural matters and hearing procedures.

The hearing proceeded as scheduled on February 29, 2024. Complainant participated *pro se* and testified. Respondent appeared and was represented by Anita Murray, Esq., who presented the testimony of Wendy Vacca, a Senior Customer Review Officer. Respondent offered three exhibits, which were all entered into the record.

The hearing resulted in a 25-page transcript. The record closed on March 28, 2024, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Anna M. Smith, who resides at 1507 East Mount Pleasant Avenue, Philadelphia, Pennsylvania 19150. Tr. 7.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant lives alone at the Service Address. Tr. 8.
4. The Complainant is retired. Tr. 8.

¹ The Formal Complaint was served on the Respondent by the Secretary's Bureau on November 17, 2023.

5. The Complainant's income consists of payments from Social Security and two pensions. Tr. 8.

6. The Complainant's Social Security income is \$2,003.27 per month. Tr. 9.

7. The Complainant's pension payments are \$171.00 and \$291.00 per month. Tr. 9.

8. The Complainant's monthly income of \$2,465.27 per month for a household of one places her at 196% of the Federal Poverty guidelines.²

9. Between October 27, 2020 and May 28, 2022, the Complainant made three payments to her account with PGW. Tr. 16; PGW Exh. 1.

10. The Complainant has had five Company-issued payment arrangements which were all broken due to nonpayment. Tr. 17; PGW Exh. 2.

11. On October 30, 2013, the Complainant received a Commission-issued payment arrangement from the Public Utility Commission's Bureau of Consumer Services (BCS) Case No. 3165893. Tr. 17; PGW Exh. 2.

12. The Complainant broke the Commission-issued payment arrangement due to non-payment. Tr. 17; PGW Exh. 2.

13. The Complainant's gas service was shut off by PGW on May 2, 2022. Tr. 20.

² See Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>

14. The Complainant's account balance as of the hearing date was \$9,447.40 which consists of unpaid bills and late payment charges. Tr. 15; PGW Exh. 1.

15. The Complainant's balance includes amounts that were incurred more than four years prior to her Formal Complaint. 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. 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). That is, by presenting 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 her 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. Cmwlt. 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. Cmwlt. 2001).

Dispute of Outstanding Balance

The Complainant disputes the amount that she owes to reestablish service at her residence.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), 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 (Opinion and Order entered Oct. 13, 2010) (*Bennet*), 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.” *Bennet*, at 6; *See also Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011).

The Complainant testified that while she does owe PGW some amount, she believes that it was unfair that she was required to pay an outstanding balance from several years ago in order to reestablish her gas service.

The Complainant’s gas service was shut off on May 2, 2022. Tr. 20. She is trying to reestablish her service and as such she is considered an applicant for service. An “applicant” is a person who is not currently receiving service who applies for service from a public utility. *See* 66 Pa.C.S. § 1403.

A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past four years for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa. Code § 56.35.

The Complainant’s account balance as of the hearing date was \$9,447.40 which consists of unpaid bills and late payment charges. Tr. 15; PGW Exh. 1. The Complainant’s balance includes amounts that were incurred more than four years prior to her filing the Formal Complaint. PGW Exh. 1.

Based on the Complainant’s testimony and the records presented by PGW, it is clear that the Complainant’s balance that the Company is requesting payment in order to reestablish service includes amounts that were incurred more than four years prior to reestablish service. The account statements indicate that there were amounts that were incurred in 2017, 2018 and 2019. *See* PGW Exh. 1. In this matter, PGW may only go back four years in terms of the outstanding balances to reestablish service. As such, PGW may only go back to June of 2020 in order to calculate the outstanding balance which the Complainant must pay in order to reestablish service. Therefore, the Complainant has met her burden of demonstrating that there

were charges incorrectly included on the outstanding balance she is required to pay in order to reestablish service at her residence.

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. § 1401–1419 (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, 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, absent a change in income. 66 Pa.C.S. § 1405(d). Under Section 1403 of the Public Utility Code, a “change in income” is defined as a decrease in household income of 10% or more if the customer's household income level under 200% of the Federal poverty level.

66 Pa.C.S. § 1403.

The Complainant lives alone at the Service Address. Tr. 8. The Complainant is retired. Tr. 8. The Complainant’s income is comprised of Social Security and two pensions. Tr. 8. The Complainant’s Social Security income is \$2,003.27 per month. Tr. 9. The Complainant’s pensions’ incomes are \$171.00 and \$291.00 per month. Tr. 9. The

Complainant's monthly income of \$2,465.27 per month for a household of one places her at 196% of the Federal Poverty guidelines.

Between October 27, 2020 and May 28, 2022, the Complainant made three payments to her account with PGW. Tr. 16; PGW Exh. 1. The Complainant has had five Company-issued payment arrangements which were all broken due to nonpayment. Tr. 17; PGW Exh. 2. On October 30, 2013, the Complainant received a Commission issued payment arrangement from Bureau of Consumer Services (BCS) Case No. 3165893. Tr. 17; PGW Exh. 2. The Complainant broke the Commission issued payment arrangement due to non-payment. Tr. 17; PGW Exh. 2. The Complainant's gas service was shut off by PGW on May 2, 2022. Tr. 20.

In this matter, the Commission is constrained to grant only one payment arrangement to the Complainant, absent a change in income. *See* 66 Pa.C.S. § 1405(d). The Complainant failed to demonstrate a change in income since she was provided with a Commission issued payment arrangement in October 2013. There is no evidence that she has paid her outstanding balance off since she received the Commission-issued payment arrangement in 2013. Further, the record is devoid of any evidence that the Complainant's income has decreased since the 2013 payment arrangement. The Complainant defaulted on that payment arrangement.

Moreover, the Complainant has not established that she is entitled to an extension of the Commission-issued payment arrangement under Section 1405(e) of the Public Utility Code. *See* 66 Pa.C.S. § 1405(e).³ The Complainant has not presented any evidence that she has experience a significant change in circumstances as defined by the Public Utility Code.⁴ As

³ 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.

⁴ *See* 66 Pa.C.S. § 1403 which defines Significant change in circumstance as 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.

such, the Complainant's request for a second Commission-issued payment arrangement must be denied.

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. In a high bill case, the Commission stated that it will 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 v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

5. "[T]he 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).

(4) Increase in the customer's number of dependents in the household.

6. A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past four years for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa. Code § 56.35.

7. An “applicant” is a person who is not currently receiving service who applies for service from a public utility. *See* 66 Pa.C.S. § 1403.

8. The Complainant did meet her burden of proving that there were incorrect charges on the outstanding balance that PGW is requesting in order to reestablish service at her residence.

9. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–1419, applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

10. 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).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Anna M. Smith against the Philadelphia Gas Works at *Anna M. Smith v. Philadelphia Gas Works* at Docket No. C-2023-3044268 is granted in part and denied in part.
2. That the Philadelphia Gas Works should recalculate, within 20 days of the Final Order by the Commission, Anna M. Smith's outstanding balance due in order to reestablish service so that no amount from prior to June 2020 is included in the balance.
3. That Anna M. Smith's request for a second Commission-issued payment arrangement is denied and dismissed.
4. That Docket No. C-2023-3044268 be marked closed.

Date: June 26, 2024

_____/s/_____
Marta Guhl
Administrative Law Judge