

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deree J. Norman

v.

Philadelphia Gas Works

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C-2015-2489503

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This decision dismisses a formal Complaint filed by Deree J. Norman (Complainant), because Complainant has not proved by a preponderance of the evidence that Philadelphia Gas Works (Respondent or PGW) violated the Public Utility Code (Code) or the rules and regulations of the Commission.

HISTORY OF THE PROCEEDING

On June 25, 2015, Complainant filed a formal Complaint against PGW alleging that he was consistently “double billed,” that PGW had “misappropriated” LIHEAP credits, and that PGW had improperly billed Complainant under PGW’s Customer Responsibility Program (CRP). Complainant also challenged the accuracy of PGW’s gas usage charge. The Complainant requested that the Commission order PGW to implement a different method of recording natural gas usage, that PGW be investigated by the State Attorney General, and that PGW be directed to

cease alleged harassing phone calls and overbilling. Complainant also asked to be compensated for “. . . the inconvenience and anguish that PGW has caused.”¹

PGW filed an Answer to the Complaint on July 15, 2015, denying the allegations set forth in the Complaint.

By notice dated August 3, 2015, the Commission scheduled this matter for an initial telephonic hearing on September 24, 2015 at 10:00 a.m. and assigned the case to me. I issued a standard form Prehearing Order dated September 1, 2015.

I conducted a telephonic hearing on September 24, 2015, at 10:00 a.m. as scheduled. The Complainant appeared and represented himself, offering testimony and twenty four exhibits lettered A through X, all being billing statements, documents related thereto, and correspondence related to CRP recertification with the exception of Complainant’s Exhibit J, a document prepared by Complainant purporting to summarize his bills and billing periods.² PGW appeared and was represented by its counsel, Laureto Farinas, Esquire. Mr. Farinas offered the testimony of Adrian Crawford, a PGW Customer Review Officer, and five exhibits: PGW Exhibit 1, a record of customer contacts between PGW and Complainant; PGW Exhibit 2, a Statement of Account; PGW Exhibit 3, a computer display of the “Account of Norman, Deree;” PGW Exhibit 4, a gas usage analysis; and PGW Exhibit 5, a BCS determination at Case No. 2684659, dated June 7, 2010. Complainant’s Exhibits A-X were received into evidence as were PGW Exhibits 1, 2, 3, and 5.

On November 12, 2015, the court reporting service filed the 97 page transcript in this proceeding, and the record closed. This case is now ready for adjudication.

¹ Given that, as explained herein, Complainant has failed to meet his burden of proof, there is no basis for the Commission to inquire into PGW’s billing practices. Complainant’s other requests for relief are beyond the Commission’s jurisdiction, even if Complainant had met his burden of proof.

² Several of Complainant’s exhibits contain hand-written words or numbers as well as shading likely from old highlighting. The actual documents speak for themselves, and the annotations have no evidentiary significance with the exceptions of the corrections to Exhibit J made at hearing which are set forth in the record. See, Tr. at 35.

FINDINGS OF FACT

1. The Complainant in this case is Deree Norman.
2. The Respondent is Philadelphia Gas Works, a Commission jurisdictional natural gas distribution company (NGDC).
3. PGW provided natural gas service to Complainant's residence at 5367 Thomas Avenue, Philadelphia, Pennsylvania, during the period covered by the Complaint.
4. Complainant has lived at the service address since 2005. Tr. at 13-14.
5. Complainant's corrected Exhibit J and the issues therein listed are being investigated by PGW. Tr. at 42-43.
6. Complainant has had gas appliances at his residence; i.e. a stove and water heater, replaced in 2015 having been disconnected in 2009-2010, and a natural gas fired house heater that was disconnected in 2009. Tr. at 20, 48.
7. On April 29, 2012, a PGW repairman visited the residence due to a reported possible gas leak and found the natural gas fired house heater connected. Tr. 47.
8. According to PGW's records, Complainant's gas water heater was disconnected in September, 2011. Tr. at 48.
9. Complainant has been a participant in PGW's CRP, originally enrolled prior to 2009, and has had discussions with PGW representatives about CRP billing, re-certification and LIHEAP. Tr. at 44-45; PGW Exhibit 1.

10. On December 21, 2009, Complainant's participation in the CRP was suspended due to his failure to re-certify. Tr. at 54; PGW Exhibit 2.

11. In February-March, 2012, Complainant was actively seeking to re-enroll in the CRP. Tr. at 49.

12. Complainant was denied re-enrollment in the CRP due to his failure to produce required documentation. Tr. at 48-49.

13. The net effect of CRP participation is to freeze a customer's arrearages and to charge the customer based solely on his income; the customer is not charged on the basis of gas used. Tr. at 56-58.

14. When Complainant was no longer a participant in the CRP on March 1, 2013, his arrearages were unfrozen, and he was billed based on gas usage. Tr. at 57; PGW Exhibit 2.

15. As of the date of the hearing in this case, Complainant had an outstanding balance of \$580.61, based on actual meter readings. Tr. at 60.

DISCUSSION

In this proceeding, Complainant bears the burden of proving that he is entitled to relief. 66 Pa.C.S. § 332(a).

To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 PA PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 PA PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (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*, 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. Comm'w., 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

In sum, Complainant alleged that he was improperly billed by PGW under PGW's Customer Responsibility Program (CRP). Complainant also challenged the accuracy of PGW's gas usage charge. At hearing, Complainant restated his allegations, presented his exhibits, and moved them into the record. Complainant did not articulate in a comprehensive fashion just how those exhibits prove his allegations. Complainant did not prove that he has been mis-billed, or that any payments, including LIHEAP payments, have been misapplied. Complainant did not prove that PGW's usage charges were inaccurate.

In PGW's cross-examination of Complainant and in PGW's rebuttal case, the issues are more comprehensible. Complainant was at one time enrolled in PGW's CRP. The net effect of CRP participation is to freeze a customer's arrearages and to charge the customer based solely on his income. The customer is not charged on the basis of gas used. On December 21, 2009, Complainant's participation in the CRP was suspended due to his failure to re-certify. In February-March, 2012, Complainant was actively seeking to re-enroll in the CRP, but Complainant was denied re-enrollment in the CRP due to his failure to produce required documentation. When Complainant was no longer a participant in the CRP on March 1, 2013, his arrearages were unfrozen, and he was billed going forward based on gas usage. Complainant's perception of mis-billing is tied to the different treatment accorded to an account in the CRP versus one not in the CRP.

With respect to Complainant's allegation that PGW's gas usage charge had to be inaccurate because he could not have been using the gas for which he was billed, Complainant also failed to meet his burden. Complainant argued that because his appliances were disconnected at different points from 2009 to 2011, he could not have been using the gas that PGW billed him for. PGW presented unrefuted testimony that on at least two occasions, September, 2011 and April, 2012, its agents were present at Complainant's residence, and appliances *were* connected to the gas supply when Complainant claimed that they were not.

Based on the evidence presented, the Complainant has failed to prove by a preponderance of the evidence that PGW has acted improperly or unlawfully. Therefore, the Complaint in this case must be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. §§ 701, 1501.
2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa.Code § 5.245(a).
3. A preponderance of the evidence is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957).
4. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.
5. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa. C.S. §§ 332(a).

