

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shelton Jackson

v.

Philadelphia Gas Works

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F-2016-2551697

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The undersigned through this decision finds that the Complainant sustained his burden of proof regarding the accuracy of the meter. The record evidence sustained the Complainant's allegation that the billed charges are incorrect. However, the meter being inaccurate does not warrant a deduction to the amount billed to the Complainant for gas usage, and therefore, the formal complaint is satisfied in part, and denied in part.

HISTORY OF THE PROCEEDING

On June 10, 2016, Complainant, Shelton Jackson, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against Philadelphia Gas Works (PGW or Company or Respondent). The Complainant alleged that there were incorrect charges on his bill. The Complainant also alleged that the meter reads gas usage incorrectly especially in the winter months and requested that the meter be replaced.

The Complaint was served electronically (eService) by the Commission's Secretary on June 17, 2016, according to the audit history of the docket. The eService is pursuant to the Waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

On July 7, 2016, Graciela Christlieb, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer denied that the actions of the Respondent were improper.

Specifically, the Respondent stated that the address of the Complainant at 6126 W. Columbia Avenue, Philadelphia, Pennsylvania (service address) generated an actual meter read bill in the amount of \$682.07 for March 2015. Complainant disputed the winter bills with the Respondent and on November 6, 2015, filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 3399720. The BCS decision dated April 26, 2016, found that the bills were correct as rendered and dismissed the informal complaint. This Complaint is a timely appeal of the BCS decision at Case No. 3399720.

A Hearing Notice dated July 22, 2016, notified the parties that an initial in-person hearing was scheduled for Tuesday, September 6, 2016, at 10:00 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) as the presiding officer.

A Prehearing Order dated July 27, 2016, provided procedural rules and guidelines for the proceeding.

A letter from the Complainant sent by facsimile dated August 26, 2016, requested that the scheduled in-person hearing on Tuesday, September 6, 2016, be rescheduled due to his work obligations. The Complainant also stated a preference for Thursdays as a day of the week that he is normally available.

The requested continuance did not indicate that it was filed with the Commission's Secretary's Bureau or served on Respondent's counsel. On August 26, 2016, the undersigned filed the requested continuance with the Commission's Secretary's Bureau and sent a copy of the request to Respondent's counsel. By electronic mail on August 31, 2016, counsel for the Respondent stated it had no objection to the requested continuance.

By Order dated August 31, 2016, the undersigned granted the requested continuance and directed that the proceeding be rescheduled on a Thursday.

By Hearing Notice dated September 1, 2016, the September 6, 2016, in-person hearing was cancelled and rescheduled for Thursday, November 10, 2016.

A Notice of Appearance was filed on October 3, 2016, which changed the counsel representing the Respondent to Laureto Farinas, Esquire.

The evidentiary hearing convened as scheduled. Mr. Jackson appeared representing himself. Mr. Farinas appeared accompanied by one potential witness representing the Respondent.

Mr. Jackson submitted two exhibits—(1) a copy of one page of the January 14, 2015, bill marked as Complainant exhibit 1; and (2) a copy of one page of the March 13, 2015, bill marked as Complainant exhibit 2. Both exhibits were admitted without objection.

During the cross-examination of the Complainant the undersigned determined that a meter test was warranted. The undersigned directed that the evidentiary hearing be recessed to enable:

- (1) the Respondent to obtain the meter from the service address;
- (2) the Respondent to perform the appropriate test of the meter; and
- (3) the Complainant to obtain evidence that the meter test was requested and paid for by the Complainant previously.

By Hearing Notice dated November 14, 2016, a further hearing was scheduled for Thursday, January 19, 2017.

The further hearing convened as scheduled. Mr. Farinas was present accompanied by one witness. The Complainant was not in attendance. The undersigned recessed to allow time for the Complainant to appear or to communicate a reasonable explanation as to why he could not be present at the scheduled further hearing. The undersigned reconvened at approximately fifteen minutes later and the Complainant remained absent from the evidentiary hearing without communicating why he failed to appear at the scheduled further hearing. Counsel for the Respondent moved to dismiss the Complaint with prejudice for lack of prosecution (Motion). The undersigned stated that the Respondent's Motion would be considered and ruled upon in writing and adjourned.

By Order dated January 25, 2017, the undersigned denied the Motion finding that although the Complainant failed to appear at the further hearing on January 19, 2017, the Complainant appeared, provided testimony and exhibits at the November 10, 2016 hearing. Consequently, the Complainant did prosecute his Complaint.

By Hearing Notice dated February 23, 2017, a further hearing was scheduled for March 23, 2017.

The further hearing convened as scheduled. Mr. Farinas was present accompanied by one witness. The Complainant was not present. Mr. Farinas presented his witness, Tiffany Jones. The witness supported testimony for the following nine exhibits:

- (1) PGW Exhibit 1 – Account Statement for service address;
- (2) PGW Exhibit 2 – Contacts for account;
- (3) PGW Exhibit 2A – Updated contacts for account;
- (4) PGW Exhibit 3 – Negotiated payment arrangement;
- (5) PGW Exhibit 4 – Respondent's response to dispute of billing;
- (6) PGW Exhibit 5 – 10-Day shut-off notice;
- (7) PGW Exhibit 6 – BCS Case No. 3399720 decision;
- (8) PGW Exhibit 7 – Respondent's letter regarding meter exchange;
and
- (9) PGW Exhibit 8 – Respondent letter for meter testing.

All nine exhibits were admitted into the record without objection. The transcript consists of 120 pages of transcribed testimony. The record closed on May 15, 2017, when the transcript was received by the undersigned. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Shelton Jackson, who received residential gas service from the Respondent at the service address. Tr. 10-11.

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility that provides gas distribution service in the Commonwealth of Pennsylvania.

3. The service address is a single row home with a basement and four floors and the Complainant is the sole occupant. Tr. 12, 15-16.

4. The Complainant has lived at the service address for about ten years or since 2007 and was a customer of the Respondent throughout the ten years. Tr. 12-15.

5. The Complainant lived with his father at the service address from 2007 until his father passed away on February 29, 2012. Tr. 14, 105-07, PGW Exhibit 2.

6. The service address has a house heater and a water heater as the gas appliances. Tr. 15-16.

7. The Complainant received a bill for gas service dated January 14, 2015, in the amount of \$604.31. Tr. 23-24, Complainant Exhibit 1.

8. The Complainant received a bill for gas service dated March 13, 2015, in the amount of \$682.07. Tr. 23-24, Complainant Exhibit 2.

9. The Complainant purchased a new water heater in about 2011. Tr. 25-26.
10. The Complainant did weatherization of doors and first floor windows in 2013. Tr. 26-27.
11. Each floor of the two floors above the basement has its own temperature setting for zoned heat, but both floors are set at 68°F. Tr. 28.
12. The Complainant considered any bill over \$400 unreasonable.
13. The Complainant characterized himself as a horrible bill payer because he did not agree with the bills from the Respondent and on several occasions failed to pay his bill. Tr. 30.
14. Based on the pattern of usage which shows higher usage during the winter season and lower usage in the summer, spring and fall seasons, the Complainant is a heating customer. Tr. 99-100.
15. By letter dated November 24, 2015, the Complainant was given information that the bills for the service address were correct as rendered and instructions on how to request a meter test. Tr. 34, PGW Exhibit 4.
16. Tiffany Jones is a Senior Customer Review Officer who has been employed by PGW for over 10 years where she investigates formal and informal complaints that customers file with the PUC against the Company. Tr. 72-73.
17. Ms. Jones investigated this Complaint. Tr. 73.
18. Gas service at the service address was transferred into the name of the Complainant on March 12, 2013. Tr. 82-83, PGW Exhibit 1.

19. A balance of \$9,086.77 was transferred from the Complainant's father, who was living at the service address, to the Complainant on March 12, 2013. Tr. 83, PGW Exhibit 1.

20. The transferred balance is not disputed. Tr. 83.

21. On May 7, 2013, the Complainant entered into a Customer Responsibility Program (CRP) agreement. Tr. 83, PGW Exhibit 1.

22. On June 13, 2014, the Complainant did not recertify his income and occupancy information so the CRP agreement was suspended. Tr. 84, PGW Exhibit 1.

23. The bills rendered once the Complainant no longer participated in CRP are all based upon actual meter readings. Tr. 84, PGW Exhibit 1.

24. The Complainant's payments can be characterized as sporadic, in that payments are made with periods of non-payment. Tr. 87, PGW Exhibit 1.

25. The Complainant's informal complaint at BCS Case No. 3475817 was dismissed September 16, 2016, because the Complainant made no payments within a 12 month period and had not shown a good faith effort to make payments on his outstanding balance. Tr. 89, PGW Exhibit 2.

26. On December 1, 2016, PGW removed the meter from the service address to test it. Tr. 89, PGW Exhibit 2A.

27. The Complainant has broken two Company-issued payment arrangements, one on June 14, 2014, and the other on June 20, 2016. Tr. 90-91, PGW Exhibit 3.

28. The Complainant has not had any Commission-issued payment arrangements. Tr. 90-91.

29. The Company has no record that the Complainant paid the \$10.00 fee for a meter test. Tr. 92, PGW Exhibit 1.

30. The Complainant had an undisputed balance of \$2,411.82 upon which he received a 10-day shut off notice on September 2, 2016, and a three-day shut-off notice on September 8, 2016. Tr. 92-93, PGW Exhibit 5.

31. By letter dated September 13, 2016, the Respondent requested the outstanding balance of \$2,411.82 plus a reconnection fee in the amount of \$123.23 for a total amount of \$2,535.05 ($\$2,411.82 + \$123.23 = \$2,535.05$) be paid to restore service to the service address. Tr. 93-94, PGW Exhibit 5.

32. The Complainant's informal complaint at BCS Case No. 3399720 was dismissed on April 26, 2015, because the Complainant did not show a good faith effort to make payments. Tr. 94-95, 112-13, PGW Exhibits 1, 2, 6.

33. The meter no. 1746999 that was at the service address tested 8.6% slow, which is outside of the allowable tolerance. Tr. 96-97, PGW Exhibits 8, 9.

34. The meter tested slow, and therefore, the measurement of usage of gas the meter provided was less than what an accurate meter would have measured. Tr. 108-09.

35. By letter dated December 2, 2016, the Complainant was informed that his meter tested slow and that the Respondent was not going to adjust his bills. Tr. 96-97.

DISCUSSION

In this Complaint, the Complainant alleged that the Respondent's meter is faulty. The Complainant also alleged incorrect charges for his billed gas usage at the service address. The issue in this proceeding is determined by whether the Complainant sustained his burden of proof. Although the record evidence supports that the meter was inaccurate, the circumstances do not warrant a deduction to the amount billed for gas usage at the service address. The relief requested by the Complainant to replace the meter has already been done by the Company. The Complainant also requested that the meter be tested which has occurred. Consequently, although the Complainant's allegations were supported by the evidence, the Complaint is satisfied in part and denied in part.

I. Applicable Legal Standard

As the proponent of a rule or order or seeking affirmative relief from the Commission, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is 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); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

If the Complainant presents 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*, 501 Pa. 433, 461 A.2d 1234 (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).

II. Whether Charges Assessed to Complainant Were Incorrect

A. Meter accuracy

The direct testimony of the Complainant was,

Q. ...you are challenging the accuracy of the meter in the winter months; is that correct?

A. That is correct.

* * *

Q. And has there ever been an occasion to check the meter?

A. No.

Q. Why?

A. I don't know how.

Q. You don't know how?

A. Right.

Q. Have you requested...have you ever requested PGW to check the meter?

- A. Yes.
Q. And the response was?
A. We see no problem with the meter.
Q. Have you asked them multiple times, or just once?
A. Multiple.
Q. And when did you start asking, in 2013?
A. Yes, ma'am. Tr. 20-22.

The Respondent provided evidence that the meter was tested on December 1, 2016 and tested 8.6% slow. Tr. 96-97, PGW Exhibits 8, 9. Thus, the record evidence supports the Complainant's allegation that the meter at the service address was inaccurate.

The Respondent replaced the meter at the service address on December 1, 2016 when it took out the meter for testing. PGW Exhibit 2a. The request that the Complainant had to replace the meter has occurred. The request by the Complainant to monitor the meter for six months is not supported by the record, and therefore, is denied.

B. Incorrect charges on bill

Since the Respondent found the meter tested 8.6% slow, the Commission's regulation at 52 Pa.Code § 59.22(b) is applicable, which states,

§ 59.22. Adjustment of bills for meter error.

(b) *Slow meters.* If, upon test of a gas meter it is found to have an average error of more than 2.0% slow, the public utility may render a bill for the gas consumed but not covered by bills previously rendered, for a period equal to 1/2 of the time elapsed since the last previous test, but not to exceed 3 months. If the period of registration error may be definitely fixed, the charge may be computed for the period.

The Respondent's witness testified that a slow meter means that the measurement of usage at the service address was recording less than what was actually used, which is beneficial to the Complainant regarding the billed usage. Tr. 108-09. In other words, the Complainant was billed for an amount less than what would have been billed if the meter were accurate.

The Respondent stated that it would not modify the billed usage as it was recorded by the slow meter at the service address. Tr. 96-97, PGW Exhibit 8. Thus, the Respondent is allowing the Complainant to be charged for gas usage at an amount that is less than what he would have been billed had the meter been accurate.

The record evidence supports the Complainant's allegation that there are incorrect charges on his bill, and therefore, the Complainant has satisfied his burden of proof. Although the Complainant prevailed in that the meter at the service address was inaccurate, which resulted in incorrect charges on his bill, the meter's inaccuracy was favorable and beneficial to the Complainant. The Respondent has stated that it will not rebill the Complainant in compliance with 52 Pa.Code § 59.22(b). Consequently, the record supports no adjustment—either a credit or rebill for an additional amount.

III. Whether Respondent Is To Be Fined

“Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service...as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa.C.S. § 1501. “Service... includes any and all acts done, rendered, or performed, and any and all things furnished or supplied...by public utilities.” 66 Pa.C.S. § 102. Statutory definition of “service” regarding grant of authority of the Commission to regulate service of every public utility is broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa.Cmwlth. 1995).

The billing of charges for gas service is part of the service that the Respondent provided to the Complainant. The error in billing charges existed because of the equipment that belongs to the Respondent, the meter, was inaccurate.¹

¹ The record evidence does not reveal how long the meter was inaccurate.

The Complainant testified that he started requesting meter testing sometime in 2013 and paid for a meter test in November 2015. Tr. 31-39. The Complainant was given the opportunity to produce any evidence to corroborate his meter testing request and payment, but failed to do so.² The Respondent has no record that the Complainant paid the \$10.00 fee for a meter test. Tr. 92, PGW Exhibit 1. I do not find that the Complainant's testimony regarding his request and payment for meter testing persuasive because it is not corroborated by any evidence.

The Commission's regulation at 52 Pa.Code § 59.21(b) regarding meter testing states,

(b) *Standard test schedule for Class A, Class B and Class C Meters.* Unless otherwise provided by this section, each public utility shall make and record tests of *Class A, Class B and Class C* meters on the following schedule:

	Test Period
	Class (Years)
A	8
B	5
C	2

The record does not reveal the type of meter that was at the service address.

Pursuant to the Opinion and Order entered September 8, 2003, in *PGW's Petition for Approval of Field Operations Initiative Implementation Plan and Restructuring Surcharge*, Docket No. M-00021612, the Commission granted PGW a conditional waiver of 52 Pa. Code § 59.21 in favor of a 20 year meter testing requirement with the obligation to submit data in support of 20 year testing by November 1, 2007. By letter dated November 1, 2007, PGW filed with the Secretary of the Commission the report providing data in support of the 20 year testing requirement. The Commission issued a Secretarial letter dated March 18, 2013, at the same

² The undersigned scheduled another hearing date for the Complainant to bring evidence that he paid for the meter testing. The Complainant failed to show on January 19, 2017, or on March 23, 2017, the scheduled hearing dates to admit such evidence. Tr. 58-61, 67-70.

docket stating, “The Commission will review the PGW meter data to determine if the 20 year period is acceptable or if PGW’s proposal should be modified.” The Commission has not issued any further order altering its position. The Respondent continues to operate with the 20 year testing requirement.

Furthermore, the Respondent is allowing the Complainant to benefit from the measurement of gas usage by the inaccurate meter by relinquishing any amount the Company could have recouped from the error in compliance with Commission regulation at 52 Pa.Code § 59.22(b).

I find the Respondent acted reasonably under the totality of the circumstances. I do not find that the Respondent provided unreasonable service, and therefore, I do not find that the Respondent’s actions warrant a civil penalty.

CONCLUSIONS OF LAW

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

2. “Burden of proof” means a duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

4. The record evidence supported the Complainant’s burden of proof regarding incorrect charges on his bill. 66 Pa.C.S. § 332(a).

5. The meter at the service address is a slow meter because it tested more than 2.0% slow. 52 Pa.Code § 59.22(b).

6. Although the Complainant's burden of proof was satisfied, the requested relief has either already occurred, or is not supported by the record evidence.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Shelton Jackson against Philadelphia Gas Works at Docket No. F-2016-2551697 is satisfied in part and denied in part.

2. That the formal Complaint filed by Shelton Jackson against Philadelphia Gas Works at Docket No. F-2016-2551697 is satisfied as to the request to perform a meter test and to replace the meter.

3. That the formal Complaint filed by Shelton Jackson against Philadelphia Gas Works at Docket No. F-2016-2551697 is denied as to the request to monitor the meter for six months.

4. That the Docket No. F-2016-2551697 is to be marked closed.

Dated: June 13, 2017

/s/
Angela T. Jones
Administrative Law Judge