

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Hardy	:	
	:	
v.	:	F-2017-2601696
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A customer of a gas distribution company failed to prove that the company billed him for gas that he did not use.

HISTORY OF THE PROCEEDINGS

On April 24, 2017, David Hardy (Complainant) filed a formal complaint against Philadelphia Gas Works (PGW). In his complaint he stated that he was not responsible for a portion of the bill and that he would like a payment arrangement. PGW filed an answer on May 25, 2017, denying the material allegations of the complaint and stated that the Complainant's bills were correct as rendered.

By hearing notice dated June 8, 2017, the complaint was scheduled for a hearing on July 19, 2017, and assigned to Administrative Law Judge Eranda Vero. ALJ Vero issued a prehearing order setting forth the procedural requirements for the conduct of the hearing on July 7, 2017.

The hearing convened as scheduled. The Complainant, who was self-represented, appeared and testified on his own behalf. PGW was represented by Graciela C. Christlieb, Esquire and presented the testimony of one witness, Patricia Bernard. PGW offered exhibits which were pre-marked as Exhibit Nos. 1, 2, 4, 5, and 6, which were admitted into the record. The hearing generated a transcript of 80 pages.¹

On August 2, 2017, PGW submitted a late-filed exhibit, PGW Ex. 7. The Complainant did not file an objection to the admission of the exhibit. By order dated November 27, 2017 the record was closed and PGW Ex. 7 was admitted into the record.

FINDINGS OF FACT

1. The Complainant is David Hardy who currently resides at 5650 Belmar Terrace, Philadelphia, PA. (N.T. 5)
2. The Respondent is PGW, a jurisdictional public utility.
3. In 2015, the Complainant resided at 6163 Webster Street, Philadelphia, PA. (N.T. 12)
4. From the end of 2015, until he moved to Belmar Terrace on December 28, 2016, the Complainant got some hot water in his apartment, but no heat. (N.T. 10-12)

¹ This matter was assigned to me by Judge Change Notice dated November 27, 2017.

5. The Complainant’s winter usage for the winter of 2014-2015 and the winter of 2015-2016 is as follows:

	CCF	Average ccf per day		CCF	Average ccf per day
2014-11	56	1.75	2015-11	26	0.87
2014-12	79	2.63	2015-12	29	0.62
2015-1	133	3.91	2016-1	30	0.86
2015-2	154	5.31	2016-2	111	3.83
2015-3	114	4.07	2016-3	51	1.82
Total	536			247	

(PGW Ex. 1)

6. The Complainant does not dispute his PGW bills for service at Belmar Terrace.
(N.T. 11)

7. A PGW employee visited the property and reported that the furnace had a wiring problem. (N.T. 14, 42; 73-74; PGW Ex. 6)

8. All of the Complainant’s meter readings in 2015 and 2016 were actual meter readings; none were estimated. (N.T. 25)

9. None of the billing for Webster Street were make-up bills, transfers from other people or theft bills. (N.T. 25)

10. In May 2015, the Complainant disputed a bill to PGW. (PGW Ex. 4)

11. By letter dated May 26, 2015, PGW informed the Complainant that a review of PGW’s records revealed that his bill was correct as rendered, but stated that if he would like his meter tested, he could request a meter test for a \$10.00 fee. (PGW Ex. 4)

12. PGW's records do not reflect a request by the Complainant to test his meter.
(N.T. 48-50)

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.² A person seeking affirmative relief from the Commission has the burden of proof.³

In this matter, the Complainant is the party seeking affirmative relief from the Commission; therefore, he has the burden of proof. This means that he has the duty to establish a fact by a preponderance of the evidence, and must show that the Company has violated the Public Utility Code or Commission regulations.⁴

The Complainant contends that he should not be responsible for all of the gas that he was billed for at his Webster Street address because he did not have heat in his apartment.⁵ He testified that a PGW employee visited the premises and informed him that the furnace had a wiring problem.

Based on a review of the record in this proceeding, the Complainant did not present enough evidence to establish a *prima facie* case to show that his bills were unreasonably

² 66 Pa.C.S. § 701.

³ 66 Pa.C.S. § 332(a).

⁴ *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

⁵ At the hearing, the Complainant abandoned his request for a payment arrangement. Therefore, no findings are made on that subject. N.T., 55.

high. The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*,⁶ and its progeny.

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

[T]he 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.”⁷

Aside from his testimony that he believed his bills were higher than they should have been, the Complainant did not present any evidence to show a marked increase in his bills during a specific period of time, that his pattern of usage had changed, or any other relevant facts or circumstances to show that his bills were unreasonably high.

The only basis for the Complainant’s claim in the record is that the Complainant was not getting heat in his apartment from the end of 2015 through most of 2016. The Complainant’s consumption during the winter of 2015-2016 was significantly lower than his consumption during the winter of 2014-2015. This is consistent with his testimony that he was not getting heat in his apartment. There is no evidence that the Complainant’s meter was not registering properly.

The Complainant admits that a PGW employee who was at his premises informed him that the wiring on the furnace for the building was faulty. A furnace with faulty wiring is also consistent with the Complainant’s testimony that he was not receiving heat in his apartment.

⁶ 54 Pa. PUC 98 (1980).

⁷ *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197, at 5 (Order entered November 15, 2011).

However, the furnace is not a facility that is owned or controlled by PGW. Therefore, PGW is not responsible for its proper operation. Rather, the operation of the furnace is the responsibility of the property owner.

In sum, the Complainant did not prove that the lack of heat in his apartment was due to any improper action or failure to act by PGW. There is no evidence that PGW overbilled the Complainant. Instead, the only evidence in the record points to a faulty furnace as the reason for the lack of heat in the Complainant's apartment.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant bears the burden of proof. 66 Pa.C.S. § 332.
3. PGW is not responsible for the operation of the Complainant's furnace.
4. The Complainant failed to sustain his burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of David Hardy against the Philadelphia Gas Works at Docket No. F-2017-2601696, is dismissed.

2. That the Secretary shall mark the docket closed.

Date: November 29, 2017

_____/s/_____
Mary D. Long
Administrative Law Judge