

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Debbie Hughey	:	
	:	
v.	:	C-2016-2567445
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Debbie Hughey because she failed to meet her burden of demonstrating that Philadelphia Gas Works charged her incorrectly for service, that PGW provided her with unreasonable or inadequate service, or that PGW improperly terminated her gas service.

HISTORY OF THE PROCEEDING

On September 21, 2016, Debbie Hughey (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). The Complainant generally alleged that the Respondent is threatening to shut off her natural gas utility service, that there are incorrect charges on her bills, that she has reliability, safety or quality problems with her utility service and that the Respondent engages in illegal and fraudulent business practices.

Specifically, the Complainant asserted that the Respondent placed false and fraudulent liens against her property. According to the Complainant, the amounts of the liens are the result of fraudulent, inflated bills and bad faith. The Complainant asserted that the Respondent never informed her that it placed a lien on her property in 2006.

Additionally, the Complainant alleged that the meter installed in her residence is not providing accurate readings of her natural gas usage. The Complainant further alleged that the Respondent fraudulently obtained funds from her.

Attached to the Complaint is a document with further allegations. In the attachment, the Complainant alleged that the Respondent installed a meter at her residence that is “bogus”. The Complainant further alleged that the Respondent falsely claimed that an agreement was made for services, never gave her a copy of the alleged agreement and violated her rights to be informed of the agreement.

Additionally, the Complainant alleged that the Respondent placed false and fraudulent charges on her bills in 2006 when she was no longer receiving gas service due to service termination.

Lastly, the Complainant alleged that the Respondent tampered with the gas line at her residence after the Respondent terminated service on April 27, 2016. The Complainant requested that the Commission direct the Respondent to remove the liens placed on her property from 2006 forward, remove the amounts the Respondent claims she owes from her account from 2006 forward and restore her credit bureau rating.

The Respondent filed an Answer with New Matter as well as Preliminary Objections on October 11, 2016. The Respondent admitted that PGW terminated service to the Complainant. The Respondent denied that there are incorrect charges on the Complainant’s account. The Respondent further denied that there are reliability, safety or quality problems with her natural gas utility service. The Respondent explained that the Complainant most recently established service at her residence on November 10, 2014, and that the account is listed as a

residential heating account. Respondent further explained that the Complainant's residence has an Automatic Meter Reading (AMR) device, and that the Respondent obtains actual meter readings every month. Lastly, the Respondent indicated that on March 24, 2016, PGW issued a ten-day shut off notice to the Complainant, and on April 27, 2016 terminated service to the Complainant.

Respondent asserted in New Matter that from May 1964 through July 2006 service at the Complainant's residence was in the name of James Hughey. From December 2007 through May 2008 service was in the name of the Complainant. Between May 2008 and November 2014, neither the Complainant nor James Hughey were customers of the Respondent. Respondent asserted that both the periods from 1964 through 2006 and from 2007 through 2008 are outside the statute of limitations.

Also in New Matter, Respondent stated that there are outstanding liens on the Complainant's property reflecting amounts owed to PGW. The Respondent contended that the Commission lacks jurisdiction over these liens and requested that the Commission dismiss the Complainant's complaint.

In the Preliminary Objections, the Respondent alleged that the Commission lacks jurisdiction over the subject matter of the Complaint and that the Complaint includes impertinent matter in its request for relief. The Respondent alleged that the Complainant's Complaint raises claims barred by the statute of limitations. The Respondent pointed out that the Complainant's Complaint refers to liens and bills from 2006. According to the Respondent, the statute of limitations divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose.

Additionally, Respondent argued in the Preliminary Objections that the Public Utility Code at 66 Pa.C.S. § 2212(n) states that nothing shall abrogate the power of the Respondent to collect delinquent accounts through the imposition of liens, pursuant to the Municipal Claim and Tax Lien Law. The Respondent asserted that, under 66 Pa.C.S. § 2212(n), the Commission has no jurisdiction over the filing of such a lien. The Respondent pointed out

that the Public Utility Code at 66 Pa.C.S. § 1414(a) authorizes the Respondent to file liens for unpaid natural gas service.

The Respondent asserted in the Preliminary Objections that the prayer for relief in the Complaint is beyond the Commission's authority. Respondent averred that the prayer for relief is irrelevant and therefore impertinent matter that the Commission should strike. The Respondent requested that the Commission dismiss the Complaint and strike off the requested relief as impertinent matter. The Respondent endorsed its Preliminary Objections with a Notice to Plead, advising the Complainant that she had ten days to file a written response to the Preliminary Objection.¹ Complainant's response was due on or before October 21, 2016.

On November 23, 2016, Complainant filed a late request for additional time to fully respond to the Respondent's pleading. No action was taken on the Complainant's request for additional time to respond.

By notice dated December 30, 2016, the Commission notified the parties that it had assigned the case to Administrative Law Judge (ALJ) David Salapa as motion judge. By order dated January 18, 2017, ALJ Salapa sustained the Preliminary Objections in part by dismissing the Complainant's claims that arose prior to September 21, 2013 and any claim concerning the liens placed on her property.²

By hearing notice dated February 2, 2017, the Commission scheduled a telephonic hearing for this matter on March 22, 2017 at 10:00 a.m. and assigned the case to ALJ Salapa.

¹ 52 Pa.Code § 5.501(b) provides that "[a] preliminary objection must contain a notice to plead which states that an answer to the objection shall be filed within 10 days of the date of service of the objection."

² ALJ Salapa indicated in his January 18, 2017 Order that the Complainant had not filed a response to the Respondent's pleadings.

On February 3, 2017, ALJ Salapa issued a Prehearing Order addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On March 15, 2017, the Complainant filed a letter requesting that the March 22, 2017 hearing be rescheduled. The letter represented that the Respondent did not object to rescheduling the hearing. ALJ Salapa granted the request and by hearing notice dated March 21, 2017, the Commission scheduled a telephonic hearing for this matter on April 25, 2017.

On April 19, 2017, the Complainant filed a letter requesting that the April 25, 2017, hearing be rescheduled. In support of the request the letter represented that the Complainant had spinal damage making it difficult for her to effectively litigate her case. Since the Respondent objected to the Complainant's request, ALJ Salapa converted the telephonic hearing into a telephonic prehearing conference in an attempt to narrow the issues to be litigated and to determine when the Complainant's medical condition would allow her to participate in a hearing.

Also on April 19, 2017, the Complainant filed a Motion to Compel in which she requested certain information from the Respondent.

ALJ Salapa conducted a telephonic prehearing conference on April 25, 2017. The Complainant appeared *pro se*. Graciela Christlieb, Esquire represented the Respondent. During the telephonic prehearing conference, the Complainant indicated that her medical condition was such that she needed a sixty-day continuance. The Respondent objected to a sixty-day continuance. After confirming that the Complainant had no conflicts, ALJ Salapa agreed to reschedule the hearing for June 15, 2017.

By hearing notice dated April 25, 2017, the Commission scheduled a telephonic hearing for this matter on June 15, 2017.

On April 25, 2017, the Complainant filed a document she captioned as “Filing of Exceptions of Judge Salapa’s Order Sustaining Preliminary Objections in Part” in which she stated her Exceptions to ALJ Salapa’s January 18, 2017 order on PGW’s Preliminary Objections.

On May 12, 2017, the Complainant filed a request for an in-person hearing and a separate request for sanctions.

By Order dated May 15, 2017, ALJ Salapa denied the Complainant’s Exceptions, treated Complainant’s May 12, 2017 request for sanctions as a Motion to Compel and declined to rule on it since Respondent still had time to respond, and granted the Complainant’s request for an in-person hearing. Also, ALJ Salapa noted that the Complainant failed to meet her service obligations pursuant to 52 Pa. Code § 1.54³, when she filed her April 25, 2017 and May 12, 2017 requests yet failed to serve him with these documents.

On May 16, 2017, Ms. Christlieb filed Philadelphia Gas Works’ Reply to Complainant’s Motion To Request a Live Hearing Instead of a Telephonic Hearing.⁴

Also on May 16, 2017, Ms. Christlieb filed Philadelphia Gas Works’ Reply to Complainant’s May 12, 2017 Request for Sanctions.

By Corrected Hearing Notice dated May 18, 2017, the hearing was changed from telephonic to in-person and reassigned to me.

On May 30, 2017, Complainant filed a document captioned as “Complainant’s Continual Motion for Sanctions and Motion to Compel Respondent to Fully Answer the

³ 52 Pa. Code § 1.54(a) provides that “[p]leadings, submittals, briefs and other documents, filed in proceedings pending before the Commission shall be served upon parties in the proceeding and upon the presiding officer, if one has been assigned.”

⁴ Since ALJ Salapa had already granted the Complainant’s request, I did not address PGW’s Reply to the Complainant’s request for an in-person hearing.

Complainant's Questions, Statements, Requests, and Etc...."⁵ Since ALJ Salapa had previously advised the parties that the Complainant's previous Motion for Sanctions would be treated as a Motion to Compel and declined to rule on it since Respondent still had time to respond, I treated the Complainant's May 30, 2017 filing as a Motion for Sanctions.

On May 30, 2017, the Complainant filed a document captioned as "Complainant's Amended Formal Complaint and Amended Relief."

On May 30, 2017, Ms. Christlieb filed Philadelphia Gas Works' Reply to Complainant's Continual Motion for Sanctions and Motion to Compel.

On June 7, 2017, Ms. Christlieb filed a response to the Amended Complaint requesting that the Commission deny the proposed amendments.

By Order dated June 7, 2017, I denied the Complainant's Motion for Sanctions.

The hearing convened as scheduled on June 15, 2017. The Complainant appeared *pro se* and testified. Complainant also presented the testimony of Diane Hughey in support of her Complaint. Complainant offered four exhibits during the hearing, none of which were admitted into the record.

Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Tiffany Jones, a PGW Senior Customer Review Officer. Respondent offered nine exhibits (PGW Exhs. 1 through 9) during the hearing which were all admitted into the record. Ms. Christlieb also proposed submitting two additional exhibits after the Hearing. Ms. Christlieb proposed submitting PGW Exhibit 10, Information regarding the contact number PGW utilized for the Complainant, and PGW Exhibit 11, Information regarding payment

⁵ Also on May 30, 2017, Complainant filed a document captioned "Complainant's Response/Answer to the Philadelphia Gas Works' Reply to Complainant's Request for Sanctions" in response to PGW's May 16, 2017 filing. Complainant also filed a document captioned "Complainant's Response/Answer to the Philadelphia Gas Works' Reply to Complainant's Motion for In-Person Hearing. Since the Commission's regulations do not allow for filing replies/answers to answers to motions, I did not consider either of these filings in my subsequent Order.

arrangement terms offered to the Complainant. Ms. Christlieb was given until June 29, 2017 to submit these proposed exhibits, and the Complainant was given until July 13, 2017 to submit any objections she might have to these exhibits.

On June 30, 2017, I received PGW's proposed Exhibits 10 and 11.

On July 14, 2017, the Complainant filed a document captioned as "Complainant's Responses to the Philadelphia Gas Works' (PGW) Late Filing of Some of Their Exhibits."

On July 28, 2017, I received from the Complainant the Complainant's Late/Additional Exhibits Submissions.

On August 9, 2017, I received a copy of the hearing transcript.

On August 10, 2017, PGW filed Objections to Complainant's Motion to Admit Late Filed Exhibits.

By Interim Order dated August 11, 2017, I informed the parties that the record was closed, that no further filings would be considered, and that an initial decision would be prepared.

On October 27, 2017, the Complainant filed Complainant's Response to Judge Pell's Interim Order of Closing the Hearing, and New Matter – Motion for the Re-Opening of the Evidentiary Record (Motion).

On November 13, 2017, Ms. Christlieb filed Philadelphia Gas Works' Reply to Complainant's Petition to Reopen the Record.

By Order dated November 27, 2017, I denied the Complainant's request to amend her Complaint and her Petition to Reopen the Record.

The record in this case consists of a 112-page transcript and nine exhibits.⁶ For the reasons set forth below, the Complainant's Complaint is denied in its entirety.

FINDINGS OF FACT

1. The Complainant in this case is Debbie Hughey.
2. The respondent in this proceeding is Philadelphia Gas Works.
3. Complainant resides at 1629 Newport Place, Philadelphia, PA 19122 (service address). Tr. 28.

Service Issues – Initiation of Service

4. On October 31, 2014, the Complainant visited PGW's Center City District Office to request service in her name at the service address. Tr. 73; PGW Exh. 1.
5. PGW informed the Complainant that she would have to pay a \$123.23 reconnection fee plus half of the deposit of \$95.00, for total payment of \$218.23. Tr. 73, 80; PGW Exh. 1.
6. Complainant made the requested \$218.23 payment. Tr. 73, 80; PGW Exh. 1.
7. PGW scheduled a November 5, 2014 turn-on appointment for the service address. Tr. 73; PGW Exh. 1.
8. PGW was not able to turn on the Complainant's gas service on November 5, 2014 because there was no access to the work area. Tr. 73.

⁶ As explained below, PGW's late exhibits will not be admitted into the record, nor will Complainant's late exhibits be admitted into the record.

9. On November 10, 2014, PGW turned on the gas at the service address in the Complainant's name. Tr. 29, 73-74; PGW Exh. 2.

10. When PGW turned the gas on in the Complainant's name on November 10, 2014, a technician replaced the Complainant's existing meter, numbered 1769076, with a new meter, numbered 2161639. Tr. 74-75; PGW Exh. 2.

11. Meter number 2161639 was installed with an index of "0". Tr. 75; PGW Exh. 2.

12. PGW replaced the existing meter due to the age of the meter. Tr. 98.

13. PGW does not require a copy of a deed for a service address when a customer requests service, nor did it request a copy of the deed for the service address when the Complainant requested service. Tr. 87.

Service Issues – Reported Gas Odors

14. On December 2, 2014, Complainant contacted PGW to report a gas odor in her basement. Tr. 92; PGW Exh. 9.

15. On December 2, 2014, a PGW technician investigated the reported odor and determined that there was no gas odor and that there were not any gas leaks at the service address. Tr. 92; PGW Exh. 9.

16. On January 12, 2016, Complainant contacted PGW to report a gas odor in her basement. Tr. 92; PGW Exh. 9.

17. On January 12, 2016, a PGW technician investigated the reported odor and determined that there was no gas odor and that there were not any gas leaks at the service address. Tr. 92; PGW Exh. 9.

Incorrect Charges

18. The Complainant started her account for service in November 2014 with a zero balance. Tr. 80; PGW Exh. 5.

19. Between November 10, 2014 and the date of termination on April 27, 2016, PGW obtained actual monthly readings from the Complainant’s gas meter. Tr. 79; PGW Exh. 5.

20. Since January 2015, the Complainant made only the following three payments towards her bills for usage at the service address:

Transaction Date	Transaction Amount
January 5, 2015	\$152.50
January 29, 2015	\$110.00
March 10, 2015	\$110.00

Tr. 82; PGW Exh. 5.

21. Complainant stopped paying her gas bills after she stopped receiving her Worker’s Compensation benefits. Tr. 31.

22. On April 27, 2016, PGW terminated the Complainant’s gas service for non-payment. Tr. 29-30, 76; PGW Exh. 3.

23. As of May 31, 2016, the Complainant’s unpaid outstanding balance totaled \$3,631.45. Tr. 30, 81; PGW Exh. 5.

24. On or about June 21, 2016, the Complainant filed a dispute with PGW challenging the accuracy of her outstanding balance. Tr. 83-84; PGW Exh. 7.

25. On July 14, 2016, PGW responded to the Complainant's dispute that her bills were based on actual usage at the service address, and that her bills were correct as rendered. Tr. 84; PGW Exh. 7.

26. PGW also informed the Complainant that she could request that PGW test the accuracy of her meter for a \$10 fee. Tr. 60-61, 84; PGW Exh. 7.

27. The Complainant did not request PGW to test the accuracy of her meter. Tr. 60, 85.

Termination of Service

28. On March 24, 2016, PGW issued the Complainant a ten-day shut off notice. Tr. 89; PGW Exh. 8.

29. PGW mailed the March 24, 2016 notice to the Complainant's P.O. Box mailing address. Tr. 89; PGW Exh. 8.

30. The March 24, 2016 ten-day shut off notice advised the Complainant of the following:

We will not shut off gas if you do ONE of the following:

- Arrange to pay your past due amount of \$2,885.24.
- Pay the amount you own on your payment plan.
- Show us a payment receipt for the past due amount.
- Make a payment arrangement (you may be eligible for a special program).
- Contact us to dispute the bill.

PGW Exh. 8.

31. PGW made two separate phone calls to the Complainant to the telephone number listed on the account for service regarding the pending termination, once on April 1, 2016 and once on April 4, 2016. Tr. 90-91, 100.

32. On April 27, 2016, PGW terminated the Complainant's gas service at the curb for non-payment. Tr. 29-30, 76-78; PGW Exhs. 3 & 4.

33. The Complainant's gas meter has not registered any gas usage since service was terminated on April 27, 2016. Tr. 94.

DISCUSSION

Late Filed Exhibits

During the hearing, Ms. Christlieb requested to submit two additional exhibits after the hearing for my consideration. Ms. Christlieb proposed PGW Exhibit 10, the Complainant's contact information, and PGW Exhibit 11, terms of payment arrangements for the Complainant. I informed the parties that PGW would have a deadline of June 29, 2017 to submit these documents, and that following receipt, the Complainant would have until July 13, 2017 to submit any written objection she might have regarding these exhibits.

Although Ms. Christlieb did submit these two exhibits, and the cover letter was dated June 29, 2017, they were not received in my office until June 30, 2017. Since PGW missed the deadline for submission of these exhibits, I will not admit them into the record. Moreover, I will not address the Complainant's late objections to these two proposed exhibits.⁷

Separately, the Complainant submitted "Complainant's Late/Additional Exhibits Submissions" on July 28, 2017. The Complainant submitted 17 proposed exhibits. Ms. Christlieb filed a response to these proposed late exhibits requesting that they not be admitted into the record. Ms. Christlieb argued that these proposed exhibits are a collection of unauthenticated documents and uncorroborated hearsay that was not submitted during the hearing or, in the alternative, were submitted but ultimately rejected as inadmissible.

⁷ Complainant did not submit her objections until July 14, 2017.

The Complainant made no mention of submitting any of these documents as late exhibits during the evidentiary hearing, even though there was discussion about PGW submitting late exhibits by June 29, 2017. Even if the Complainant had raised the possibility of submitting late exhibits during the hearing, I would have imposed the same strict deadline on her for submission. To accept these extremely late submitted documents now (some of which I already deemed inadmissible during the evidentiary hearing) would be unfair to PGW, especially since I have deemed their proposed late exhibits inadmissible for failing to submit them by the June 29, 2017 deadline. Accordingly, the Complainant's proposed late exhibits are not admitted into the record.

Burden of Proof

The Public Utility Code, 66 Pa.C.S.A. § 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.A. § 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 Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 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), 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*, 364 Pa. 45, 70 A.2d 854 (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 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*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 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), *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).

In the present case, the Complainant raised claims that there are incorrect charges for gas service on her bill, that she has had a reliability, safety or quality problem with her gas service, and that PGW improperly terminated her gas service. Each of these issues will be addressed separately below.

Incorrect Charges

In her Complaint and during the hearing on her Complaint, the Complainant alleged that there are incorrect charges on her bills for service at the service address.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), 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 *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010), 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.” *Id.* at 6 (emphasis added). See *Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011) (holding that limiting the *Waldron* Rule to the three factors is too limiting).

During the hearing, the Complainant argued that the entirety of her balance is incorrect because of “games and covert tactics that has been going on as well as the tampering with or inaccurate gas meter itself.” Tr. 30. The Complainant further argued that she doesn’t feel she should be required to pay for any portion of her bill since she believes that PGW intentionally inflated her bill. Tr. 31.

Although the Complainant insisted that PGW deliberately inflated her bill, she did not offer anything besides her own opinion to support that claim. No matter how honest and strong the Complainant’s assertions are, they cannot form a basis for a finding of fact in her favor. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlt. 2000) (citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)).

Moreover, when I asked the Complainant questions about her household composition in an attempt to determine the accuracy of her gas bills, she refused to state on the record the number of people that lived in her home between November 2014 and April 2016:

Judge Pell: During this period of time between November of 2014 and April 2016, how many people were living in your home?

The Witness: For privacy issues, I am just going to talk about –

Judge Pell: You don't have to give me names. You just need to tell me how many people.

The Witness: For privacy issues, I am just going to focus on three.

Judge Pell: (Are) there more than three?

The Witness: For privacy issues, that's all I want to say Your Honor.

Judge Pell: Okay, you realize you are not responding to my question though?

The Witness: I know but for privacy sake, I have the issue to maintain the privacy, so for privacy sake, I am going to say three people.

Judge Pell: So, does that mean you are refusing to answer my question?

The Witness: Sir, I am not refusing to answer but the thing is, I know there are some privacy issue that by right of law I am entitled to and to maintain their privacy and HIPPA Act, I prefer not to answer it completely, but I am disclosing I want to say three people please.

Judge Pell: I just don't understand how telling me the number of people in your house is violating anything. I don't know their identities. I just know the number of people. It goes to possible usages.

The Witness: Well I will focus on three people and possible usages and like I said, when I get a chance to talk to you I will tell you about it.

Tr. 31-32. The number of people occupying a household can have a direct impact on gas usage at a service address. The Complainant's decision to deliberately withhold information regarding the number of people in her household during the relevant time period undermined her credibility on any argument she made regarding being overbilled for gas service.

Even assuming that all of the Complainant's assertions were true, the Company offered evidence that refuted the Complainant's claims. PGW witness Tiffany Jones testified credibly and supplied documentation demonstrating that the Complainant's \$3,631.45 is based on actual usage at the service address, and that the Complainant's balance accrued because she made only three payments on her account between January 5, 2015 and the April 27, 2016 termination of her service. Tr. 82, 84; PGW Exhs. 5 and 7. Ms. Jones further testified that the Complainant did not raise concerns regarding the accuracy of her outstanding balance until June 21, 2016, nearly two months after PGW terminated her service for non-payment. Tr. 83-84; PGW Exh. 7. Moreover, Ms. Jones testified that in addition to advising the Complainant on July 14, 2016 that her bills were based on actual usage and were correct as rendered, PGW also informed the Complainant that she could request PGW to test the accuracy of her meter for a \$10 fee. Tr. 60-61, 84; PGW Exh. 7. Ms. Jones testified that the Complainant never requested PGW to test the accuracy of her meter. Tr. 85.

Although the Complainant insisted that there are incorrect charges on her bills for service at the service address, the record demonstrates that the Complainant's monthly bills were based on actual usage at the property, and that her large balance accrued because she did not make regular payments on her account. Under the circumstances, I conclude that the Complainant failed to meet her burden on the issue of incorrect charges.

Quality of Service

As previously noted, the Complainant raised claims concerning the reliability, safety or quality of PGW's gas service. Specifically, Complainant made allegations about two PGW workers who came to her home on the day her service was started in 2014. She alleged

that they tampered with her meter. Tr. 37-39. Complainant further alleged that she felt threatened by one of these men. Tr. 58. Additionally, the Complainant alleged that PGW attempted to steal her house by asking her to supply a copy of her deed before initiating gas service. Tr. 40.

Separate from her allegations regarding what transpired when PGW initiated service in her name, the Complainant alleged that PGW improperly responded to her concerns regarding gas leaks at the service address. Specifically, Complainant alleged that PGW's technicians were dishonest and lied about not smelling gas when they came to investigate reports of gas odors at the service address. Tr. 62.

PGW is required by law to provide its customers with adequate, safe and reasonable service with respect to its service. As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S.A. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S.A. § 1501, provides, in relevant part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility. (footnote omitted).

478 A.2d at 949.

The statutory definition of “service” is to be broadly construed.⁸ *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PGW’s actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

Although the Complainant alleged that PGW required her to supply a copy of her deed when she applied for service, that technicians tampered with her meter, that she felt threatened by a PGW technician, and that PGW technicians failed to properly respond to her reports of gas odors in her basement, she did not offer anything other than her own opinion to substantiate any of these claims. As previously noted, no matter how honest and strong the Complainant’s assertions are, they cannot form a basis for a finding of fact in her favor.⁹

Contrary to the Complainant’s testimony, the record demonstrates that PGW installed a new meter at the service address when she initiated service in her name, and that the meter was installed at an index of “0”, meaning she started her gas service with a \$0.00 balance on her account. Tr. 74-75, 80; PGW Exhs. 2 and 5. Moreover, and as previously noted, PGW billed the Complainant based on her actual usage at the service address. Tr. 79, 84; PGW Exhs. 5 and 7. The record further demonstrates that the Complainant’s large outstanding balance is the result of her not paying her monthly bills; it is not the result of a faulty or tampered meter. Tr. 82; PGW Exh. 5.

Additionally, the record demonstrates that on two separate occasions, PGW responded to the Complainant’s concerns regarding gas odors in her basement. The record

⁸ “Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . 66 Pa.C.S.A. § 102.

⁹ See *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000) (citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)).

further demonstrates that on both occasions, the technicians documented that they did not smell any gas odors, and that they did not find any evidence of gas leaks. Tr. 92; PGW Exh. 9.

Lastly, PGW witness Jones testified that PGW does not require an applicant for gas service to supply a copy of a deed for a service address as part of the application process. Tr. 87. Moreover, Ms. Jones testified that PGW did not require the Complainant to supply a copy of her deed when she applied for gas service. Tr. 87. I found Ms. Jones' testimony to be credible.

Upon review of the record, I find that PGW's personnel acted appropriately during the application process, during the installation of the Complainant's gas meter in 2014, and in response to her reports of gas odors. Accordingly, the Complainant did not meet her burden of demonstrating that PGW provided her with inadequate or unreasonable service.

Termination of Service

Complainant argued that PGW inappropriately terminated her gas service. Complainant argued that PGW did not provide her with any notice of termination, only that they appeared at her property and turned her gas service off. Tr. 41, 62-63.

In response to the Complainant's testimony, PGW witness Jones offered testimony and documentation demonstrating that on March 24, 2016, PGW issued the Complainant a ten-day shut off notice to her P.O. Box mailing address, that the notice advised the pending termination was for a past-due amount, and that the notice advised of steps she could follow to avoid termination of her service. Tr. 89; PGW Exh. 8. Ms. Jones further testified that PGW made two separate phone calls to the Complainant to the telephone number listed on the account regarding the pending termination, once on April 1, 2016 and again on April 4, 2016. Tr. 90-91, 100.

Regarding authorized termination of service, Commission regulations at 52 Pa.Code § 56.81(1) provide that “[a] public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91—56.100 (relating to notice

procedures prior to termination) for any of the following actions by the customer . . . [n]onpayment of an undisputed delinquent account.” Regarding general notice provisions, Commission regulations at 52 Pa.Code § 56.91(a) provide in pertinent part that “[p]rior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination.”

Additionally, Commission regulations provide in pertinent part that “a public utility may not interrupt, discontinue or terminate service without attempting to contact the customer or responsible adult occupant, either in person or by telephone, to provide notice of the proposed termination at least 3 days prior to the scheduled termination.” 52 Pa.Code § 56.93(a). Regarding phone contact, Commission regulations provide that:

Phone contact shall be deemed complete upon attempted calls on 2 separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day, with the various times of the day being daytime before 5 p.m. and evening after 5 p.m. and at least 2 hours apart. Calls made to contact telephone numbers provided by the customer shall be deemed to be calls to the residence.

52 Pa.Code § 56.93(b).

At the time PGW issued the ten-day termination notice to the Complainant she had a large unpaid balance that she did not dispute with the Company until June 2016. PGW Exhs. 7 & 8. Since the Complainant did not have an active dispute regarding her balance at the time of the notice, PGW did not violate the Commission’s regulations when it issued the ten-day notice to the Complainant on March 24, 2016. Moreover, PGW followed the Commission’s regulations regarding notice when a representative made two separate phone calls to the Complainant to the telephone number listed on her account regarding the pending termination, once on April 1, 2016 and again on April 4, 2016.

Although the Complainant insisted that she did not receive this notice and disputes that PGW made these telephone calls, her reluctance to be forthcoming with responses

to basic questions during the hearing leaves her credibility in doubt. Moreover, the record demonstrates that the Complainant had a poor payment history, justifying PGW's decision to terminate her gas service for non-payment. Under the circumstances, I conclude that the Complainant failed to meet her burden of demonstrating that PGW improperly terminated her gas service.

Accordingly, the Complainant's Complaint is denied in its entirety.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S.A. § 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 Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. In establishing whether a "high bill" has been demonstrated, while the accuracy of the meter is an important factor in resolving billing disputes, the Commission will also consider 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. Philadelphia Electric Co.*, 54 Pa. PUC 98, 100 (1980).

5. The Complainant has not met her burden of proving that respondent billed her incorrectly for electric service.

6. PGW did not provide the Complainant with inadequate service in violation of 66 Pa.C.S. § 1501.

7. A utility may issue written notification of termination to a customer for nonpayment of an undisputed delinquent account. 52 Pa.Code § 56.81(1).

8. A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91—56.100 (relating to notice procedures prior to termination) for nonpayment of an undisputed delinquent account.” 52 Pa.Code § 56.81(1).

9. PGW properly terminated the Complainant’s gas service for non-payment.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works’ proposed Exhibits 10 and 11 not be entered into the record of this proceeding;

2. That Debbie Hughey’s late exhibits submitted on July 28, 2017 not be entered into the record of this proceeding;

3. That the Complaint of Debbie Hughey against Philadelphia Gas Works at Docket No. C-2016-2567445 is denied; and

4. That the record at Docket No. C-2016-2567445 be marked closed.

Dated: December 5, 2017

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge