

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Barbara Cooke	:	
	:	
v.	:	F-2017-2623460
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s Complaint because she failed to sustain her burden of showing that Philadelphia Gas Works billed her incorrectly for gas service during the month of March 2017.

**HISTORY OF THE PROCEEDING**

On September 1, 2017, Barbara Cooke (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “other” and indicated that her bill from March 1, 2017 to March 29, 2017, was high because she was away from March 17, 2017 to March 26, 2017. As relief, the Complainant requested her actual meter readings for the period she was away from her apartment.

On October 19, 2017, Respondent filed an Answer denying that the bill for service at 312 S. 24<sup>th</sup> Street, 3-B, Philadelphia, PA (service address) for usage from March 1, 2017 to March 29, 2017, was incorrect.

By Telephonic Hearing Notice dated November 9, 2017, a telephonic hearing was scheduled for January 8, 2018 at 10:00 a.m., and the matter was assigned to me. A Corrected Hearing Notice was issued on November 13, 2017, correcting information in the Initial Telephonic Hearing Notice.

I issued a Prehearing Order on November 16, 2017. The Prehearing Order again advised the parties of the call-in information for the telephonic hearing, directed the parties to comply with various procedural requirements, and also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on January 8, 2018. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Glace, a Senior Customer Review Officer. Respondent offered three exhibits which were all admitted into the record.

The record in this case consists of a 29-page transcript and three exhibits. The record closed on February 1, 2018, when I received the transcript of the January 8, 2018, hearing.

#### FINDINGS OF FACT

1. The Complainant in this case is Barbara Cooke.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant's Complaint concerns service to 312 S. 24<sup>th</sup> Street, 3-B, Philadelphia, PA (service address). Tr. 10.

4. The Complainant lives alone at the service address. Tr. 11.

5. The Complainant's gas appliances include a gas range/oven and a heater.  
Tr. 11.

6. When the Complainant is home during heating months, she will set the thermostat on her heater to 68 degrees. Tr. 12.

7. When the Complainant is not at home during heating months, she sets her thermostat to its lowest possible setting. Tr. 12.

8. The Complainant does not have access to, nor can she physically shut off, her heater because it is kept in a locked cabinet in her apartment complex. Tr. 15.

9. The Complainant was away from home from March 18, 2017<sup>1</sup> through March 26, 2017, returning on March 27, 2017. Tr. 11, 13.

10. From March 18, 2017 until her return on March 27, 2017, the Complainant placed the needle on her thermostat to its lowest possible setting. Tr. 12.

11. For the bill dated March 30, 2017, PGW billed the Complainant \$84.39 for 53 CCFs of usage for the month of March 2017. Tr. 23-24; PGW Exh. 2.

12. PGW based the Complainant's March 2017 bill on the monthly meter reading for the service address. Tr. 21, 23.

13. PGW collects meter readings on a monthly basis. Tr. 21.

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<sup>1</sup> Although the Complainant wrote in her Complaint that she was away from home from "3/17/17 to 3/26/17," she testified that she was away from home beginning on March 18, 2017.

14. PGW does not keep records of how much gas is used on a particular day.

Tr. 21.

### DISCUSSION

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. 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 claimed that PGW billed her incorrectly for service during the month of March 2017. 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 *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 also 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 acknowledged that she did not have access to her heater to turn it off. Rather, the Complainant asserted that while she was away from March 18, 2017 through March 26, 2017, she turned her thermostat down to its lowest possible setting and this is the equivalent of turning her heater off. Based on this argument, the Complainant asserted that

she could not have registered any gas usage during this period. However, she did not offer anything beyond her own opinion to establish that setting the needle on her thermostat to its lowest possible setting results in her heater being shut off. 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, the record demonstrates that PGW based the Complainant's March 2017 bill on the monthly meter reading for the service address. Under the circumstances, I cannot conclude that the Complainant's heater was off and not using gas during this period.

Since the Complainant did not offer any other explanation to substantiate her claim that PGW billed her incorrectly for service during March of 2017, she failed to meet her burden of proof in this case. 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. Cmwlt. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlt. 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. 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.Cmwlth. 2000) citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987).

6. The Complainant has not met her burden of proving that respondent billed her incorrectly for gas service during the month of March 2017.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Barbara Cooke against Philadelphia Gas Works at Docket No. F-2017-2623460 is denied; and
2. That the record at Docket No. F-2017-2623460 be marked closed.

Date: April 19, 2018

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