

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kimbrell Francis	:	
	:	
v.	:	F-2017-2622398
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal Complaint filed by Kimbrell Francis (Complainant) against Philadelphia Gas Works (PGW) alleging misbilling. Complainant failed to show by a preponderance of the evidence that PGW had misbilled her or that it had violated the Public Utility Code (Code) or a regulation of the Commission.

HISTORY OF THE PROCEEDING

This case is a timely appeal of a determination by the Commission's Bureau of Consumer Services (BCS) at Case No. 3526576. On August 19, 2017, Complainant filed a formal Complaint alleging misbilling by PGW.

On September 21, 2017, PGW filed an Answer to the Complaint in which it denied any misbilling and asked that the Commission dismiss the Complaint.

On October 10, 2017, a telephonic hearing Notice was issued setting November 9, 2017, as the date for a hearing in this case.

On October 27, 2017, a standard form prehearing Order was issued.

On November 9, 2017, a telephonic hearing convened originating from the Commission's office in Harrisburg, Pennsylvania. Complainant was present and offered testimony as well as ten exhibits that were received into evidence: Exhibit C-1, a photograph of a water tank; Exhibit C-2, a photograph of a water tank; Exhibit C-3, a photograph of a water tank; Exhibit C-4, a three day shut off notice; Exhibit C-5, a photograph of a meter; Exhibit C-6, a copy of a bill dated April 4, 2017, Account No. 0328257791 for \$710.60; Exhibit C-7, a copy of a bill dated March 4, 2017, Account No. 0328257791 for \$157.74; Exhibit C-8, a copy of a bill dated April 4, 2017, Account No. 0214060399 for \$18.55; Exhibit C-9, a copy of a bill dated March 3, 2017, Account No. 0214060399 for \$0.00; and Exhibit C-10, a copy of a bill dated April 4, 2017, Account No. 964817625 for \$71.32.

Graciela Christlieb, Esquire, appeared on behalf of PGW and offered the testimony of Adrian Pinkney, a Customer Review Officer with PGW. PGW also offered fifteen exhibits that were received into evidence: Exhibit PGW-1, a Utility Service Agreement; Exhibit PGW-2, a Statement of Account for Account No. 0328257791 from February 22, 2017, to November 2, 2017; Exhibit PGW-3, a service order dated February 22, 2017; Exhibit PGW-4, a customer contact log for Account No. 0328257791 from February 8, 2017, to September 1, 2017; Exhibit PGW-5, a letter dated May 1, 2017, from PGW to Complainant; Exhibit PGW-6, a letter dated May 6, 2017, from PGW to Complainant; Exhibit PGW-7, documentation from BCS Case No. 3526576; Exhibit PGW-8, a utility service agreement; Exhibit PGW-9, a Statement of Account for Account No. 0214060399 from March 1, 2017 to November 6, 2017; Exhibit PGW-10, a service order dated March 1, 2017; Exhibit PGW-11, a customer contact log for Account No. 0214060399, from February 8, 2017 to August 24, 2017; Exhibit PGW-12, a Utility Service Agreement; Exhibit PGW-13, a Statement of Account for Account No. 964817625 from March 8, 2017 to November 3, 2017, Exhibit PGW-14, a service order dated March 8, 2017; and, Exhibit PGW-15, a customer contact log for Account No. 964817625 from February 2, 2017 to August 24, 2017.

The record in this case closed on December 4, 2017, with the filing of an 82-page transcript. That transcript and the above-listed exhibits comprise the record of this case.

This matter is now ready for adjudication.

FINDINGS OF FACT

1. Kimbrell Francis is the Complainant in this case.
2. Philadelphia Gas Works, a Commission jurisdictional natural gas distribution company, is the Respondent.
3. The service address referenced in the Complaint is 161 W. Penn Street, Philadelphia, Pennsylvania.
4. Complainant purchased the property in August, 2016 as an investment. Tr. at 7, 17, 27.
5. Heat is supplied to the property by hot water radiators with the water heated by a gas furnace. Tr. at 19.
6. No one has occupied the property since the time that it was purchased. Tr. at 19.
7. Rehabilitation of the structure started in February, 2017, and was completed in August, 2017. Tr. at 9-11; 20.
8. There are three separate apartments in the structure, one on each floor. Tr. at 20.

9. The first floor apartment is 1,016 square feet; the second floor apartment is 900 square feet, and the third floor apartment is 875 square feet. Tr. at 24.

10. Each floor has its own thermostat. Tr. at 30.

11. During the period of time over which the structure was being rehabilitated, the temperature was kept at 68 degrees. Tr. at 30.

12. The billing for each floor is in three separate accounts, each of which is in Complainant's name. Tr. at 32.

13. The three units in the structure are separately metered. Tr. at 38.

14. Account No. 0328257791 is associated with the first floor. Complainant's Exhibit 1.

15. Account No. 0214060399 is associated with the second floor. Complainant's Exhibit 2.

16. Account No. 964817625 is associated with the third floor. Complainant's Exhibit 3.

17. All of the bills sent to Complainant correspond to actual usage on the meters during the time that Complainant has been the customer of record; i.e. after February 22, 2017. Tr. at 42.

18. Service to the first floor was started on February 22, 2017. Tr. at 45-46; PGW Exhibit 3.

19. Natural gas service is supplied to three appliances on the first floor: a house heater rated at 90,000 BTUs; a gas range rated at 56,000 BTUs; and a water heater rated at 34,000 BTUs. Tr. at 46-47; PGW Exhibit 3.

20. On April 25, 2017, the first floor gas meter at the service address was replaced and tested for accuracy. Tr. at 49; PGW Exhibits 4, 5.

21. Complainant was advised by letter from PGW that the first floor meter had tested with acceptable levels of accuracy. Tr. at 51; PGW Exhibit 5.

22. Service to the second floor was started March 1, 2017. Tr. at 57, PGW Exhibit 8.

23. Natural gas service is supplied to two appliances on the second floor: a house heater rated at 75,000 BTUs and a water heater rated at 40,000 BTUs. Tr. at 59; PGW Exhibit 10.

24. Service to the third floor was started on March 8, 2017. Tr. at 62; PGW Exhibit 7.

25. Natural gas service is supplied to two appliances on the third floor: a house heater rated at 80,000 BTUs and a water heater rated at 40,000 BTUs. Tr. at 62-63; PGW Exhibit 14.

DISCUSSION

In this proceeding, Complainant bears the burden of proving that she 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. Pub. Util. 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. 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).

Since the Complainant's complaint alleges overbilling, the Complainant's burden of proof is governed by Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98 (1980) (Waldron). In Waldron, the Commission concluded that a complainant may establish a prima facie overbilling case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If the Complainant has submitted such evidence, the burden of going forward with the evidence shifts to the Respondent.

If the Respondent fails to rebut the Complainant's evidence, then the Complainant would prevail. If the Respondent places evidence into the record to rebut the Complainant's prima facie case, the burden of going forward with the evidence shifts back to the Complainant. To satisfy the burden of proof, the Complainant must rebut the Respondent's evidence by a preponderance of the evidence.

Although the burden of going forward with the evidence may shift from one party to another during a proceeding, the "burden of proof" never shifts. It always remains on the Complainant. Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528 (1980).

The Commonwealth Court broadened the Commission's ruling in Waldron in Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlt. 2001) (Milkie). The Commonwealth Court held that the Commission's requirement that a complainant must establish certain specific elements to make out a prima facie case was too restrictive. The Commonwealth Court ruled that even where the utility has presented evidence that it has tested the customer's meter and found it to be accurate, the customer may prove his or her case by circumstantial evidence that the metered usage exceeded actual usage.

Subsequent to the Milkie decision, the Commission has determined that in an overbilling case, it may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Opinion and Order entered October 13, 2010); Thomas v. PECO Energy Co., Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011).

As noted above, the burden of proof always remains with the Complainant and if the Respondent presents evidence that is co-equal or greater in weight than the Complainant's, the Complainant will not have met her burden of proof. The Commonwealth Court in Milkie emphasized that the mere proof by the utility that its measuring devices are accurate is no longer the sole determinant of whether there is a basis to a complaint of overbilling, citing Burleson v. Pa. Pub. Util. Comm'n, 461 A.2d 1234 (Pa. 1983).

Complainant purchased the property at 161 W. Penn Street, Philadelphia, Pennsylvania, in August, 2016, as an investment. Rehabilitation of the structure to convert each floor into a separate apartment, started in February, 2017, and was completed in August, 2017.

At issue in this case are bills for natural gas service to the property in the March-April, 2017 time frame. Complainant contends that the bills are excessive and do not make sense to her. Complainant was also concerned about a termination notice left at the property and a meter with a 2012 date tag on it. Tr. at 26. Complainant questions how there could be such a wide difference in usage among the three floors. Tr. at 70. The first floor apartment is 1,016

square feet; the second floor apartment is 900 square feet, and the third floor apartment is 875 square feet. Tr. at 24. The bills for April 4, 2017 are: \$710.60 for the first floor, \$18.55 for the second floor, and \$71.32 for the third floor.

PGW's position is that the original first floor meter was accurate¹, and that the first floor meter recorded actual usage, and that Complainant has not established a year-to-year usage pattern, so she may not be aware of the cost of heating the property. Tr. at 49-51, 53-55; PGW Exhibits 4, 5. PGW argues that the difference in the square footage of the three different apartments and the number and rating of the appliances used on each floor may explain billing differentials. Tr. at 60-64. PGW asserts that the termination notice left at the property was intended to apprise the owner of how to obtain gas service. Tr. at 67-68.

Regarding the reason(s) as to why so much more gas was used on the first floor in March-April 2017, Complainant did not show, by a preponderance of the evidence, that she had been misbilled. Complainant did not demonstrate any inaccuracy in PGW's metering, nor did she show how her bills may have been miscalculated. PGW is persuasive in its contention that as service to the property only started in February, 2017, Complainant has no established usage pattern at the time she filed her Complaint. I must note, however, that leaving a termination notice seems a counter-intuitive method for determining whether a customer wants service.

As Complainant has failed to show that she has been misbilled, the Complaint must be dismissed.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

¹ 52 Pa. Code § 59.22

