

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elizanda Dorsainvil	:	
	:	
v.	:	F-2018-3000484
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s Complaint because she failed to sustain her burden of proving that Philadelphia Gas Works charged her excessively for gas service installation.

**HISTORY OF THE PROCEEDING**

On March 2, 2018, Elizanda Dorsainvil (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 challenged the amount PGW charged her to install gas service at 149 W. Godfrey Avenue, Philadelphia, PA (service address). As relief, the Complainant requested a partial refund of the amount PGW charged her so she can fix her patio, which PGW damaged during installation.

On April 4, 2018, Respondent filed an Answer denying that there is a reliability, safety or quality problem with the utility service at the service address. Respondent further

answered: that on December 18, 2017, the Complainant contacted PGW and requested new service installation at the service address; that on December 18, 2017, PGW's Marketing Department issued a distribution order to the Distribution Department for a head of service for the premise; that on January 4, 2018, the Marketing Department received an estimated cost to install a service line and head of service at the service address; that the amount was finalized at \$4,584.00 for heater only services; that on January 9, 2018, a Marketing Department representative emailed the Complainant the charges and the sketches; that on January 30, 2018, PGW's Marketing Department responded that the estimate was \$4,584.00 and that the estimate represents the cost to install new service for the customer which must be installed under the Complainant's patio area; that PGW informed the Complainant that it will not be responsible for restoring her patio; and that PGW completed the turn on at the service address on March 19, 2018.

By Hearing Notice dated April 6, 2018, a hearing was scheduled for May 23, 2018 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on April 9, 2018. The Prehearing Order 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 May 23, 2018. Complainant appeared *pro se*. Respondent appeared and was represented by Laureto Farinas, Esq., who had one witness available to testify. At the outset of the hearing, the Complainant clarified that she was not looking for a partial refund to fix her patio, she was instead challenging the amount PGW charged her for installation of gas service. Since PGW was not prepared to address the cost that was quoted to the Complainant for service installation, I granted Mr. Farinas' request for a continuance so he could appear with a witness prepared to address how the estimate was calculated.

By Hearing Cancellation/Reschedule Notice dated May 23, 2018, the hearing was rescheduled for July 17, 2018, at 10:00 a.m.

The hearing reconvened as scheduled on July 17, 2018. Complainant appeared *pro se* and testified. Complainant offered two exhibits which were both admitted into the record. Respondent was again represented by Mr. Farinas, who presented the testimony of Jessica Glace, a Senior Customer Review Officer, and Sean Beaty, PGW's Director of Residential and Commercial Sales. Respondent offered three exhibits (PGW Exhs. 1, 3 & 4)<sup>1</sup> which were all admitted into the record.

The record in this case consists of a 90-page transcript and five exhibits. The record closed on August 15, 2018, when I received the transcript of the July 17, 2018, hearing.

### FINDINGS OF FACT

1. The Complainant in this case is Elizanda Dorsainvil.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant's Complaint concerns installation of gas service at 149 W. Godfrey Avenue, Philadelphia, PA 19047 (service address). Tr. 22.
4. The Complainant has owned the service address since 2004. Tr. 23.
5. The Complainant previously resided at the service address but now maintains it as a rental property. Tr. 22-23.
6. As of the date of the hearing, the service address was vacant. Tr. 23.
7. Every time PGW connects a new house to its gas mains, the cost of installation varies based on the number of gas appliances and projected gas consumption, whether there are obstacles in the way of the gas main, and the location of the gas main. Tr. 72.

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<sup>1</sup> Mr. Farinas indicated that, although PGW had a potential exhibit pre-marked as PGW Exhibit 2, he deemed this exhibit to be unnecessary. Tr. 56.

8. A customer seeking service installation must have their gas appliances in place before PGW will turn service on. Tr. 85.

9. The gas appliances installed dictate the size of the pipes needed for proper gas pressure and safety. Tr. 70.

10. In December 2017, the Complainant contacted PGW to request gas installation at the service address. Tr. 24, 42.

11. The Complainant informed PGW that she would be installing a home heater that would consume 90 British Thermal Units (BTU) per hour. Tr. 69, 76; PGW Exh. 4.

12. On an unspecified date in December 2017, the Complainant had a gas heater installed at the service address. Tr. 26.

13. In January 2018, a PGW representative visited the service address to inspect the recently installed gas heater. Tr. 26.

14. Based on the gas heater the Complainant installed, PGW estimated that she would use 61 thousand cubic feet (MCF) of natural gas per year. Tr. 71; PGW Exh. 4.

15. PGW determined that to connect the Complainant to the main gas line, it would have to run 20 feet of 1&1/4-inch diameter piping from the gas main to the service address. Tr. 67; PGW Exh. 4.

16. PGW also determined that it would have to break the concrete sidewalk to find the main, drill under the Complainant's patio to find the service at the front of the home, and run 20 feet of gas pipe to the service address. Tr. 31, 74; PGW Exh. 4.

17. The cost per foot of 1&1/4-inch diameter piping, including materials, time and labor, is \$362.10. Tr. 68; PGW Exh. 4.

18. PGW informed the Complainant that they would have to go through the concrete patio in front of the service address to complete installation, and that she would be responsible for completing repairs to the patio. Tr. 37, 44; PGW Exh. 1.

19. PGW determined the overall cost to install service at the service address to be \$7,242.00 (20 feet of pipe x \$362.10 per foot = \$7,242.00). Tr. 81; PGW Exh. 4.

20. Regarding extensions of service, Rule 10.1.A of PGW's Gas Service tariff provides in pertinent part:

The Company will furnish and install at no cost to the Customer or developer, delivery main and service-delivery pipe of an amount up to five times the anticipated annual Delivery Charge, as set forth in this Gas Service Tariff, and the Customer or developer shall pay a customer contribution for any costs in excess of this allowance.

Gas Service Tariff – Pa.P.U.C. No 2, Rule 10.1.A.<sup>2</sup>

21. In accordance with PGW's Gas Service tariff Rule 10.1.A, PGW projected that it would earn \$2,658.00 in profit from gas usage at the service address with the new house heater over a 5-year period, plus the meter charge. Tr. 64-65, 69, 71, 76; PGW Exh. 4.

22. On January 4, 2018, PGW issued an agreement letter to the Complainant advising her of the following:

Thank you for your request for gas supply service at 149 W. Godfrey Ave. We have reviewed both your request and the availability of our service at this location. Although PGW is able to perform part of this installation at no cost to you, due to construction costs associated with serving this property, we must request that costs over and above PGW's portion be paid by you in order to obtain service. The amount for which you are responsible (the "Customer Charge") is \$4,584.00. Please note that you will be responsible for restoring all landscaping, hardscaping and paving on your property associated with the

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<sup>2</sup> Pursuant to 52 Pa.Code § 5.408(a), I am taking judicial notice of PGW's Gas Service Tariff as a document on file with the Commission and the contents of any portions discussed in this Initial Decision.

installation. PGW will not be responsible for restoring the patio located in the area of the service installation. PGW did not include this work in reaching its conclusion.<sup>3</sup>

Tr. 87; PGW Exh. 1.

23. The January 4, 2018, agreement letter also informed the Complainant that the full estimate for installation was \$7,242.00, and that pursuant to Rule 10.1.A of PGW's Gas Service tariff, PGW reduced this amount by the \$2,658.00 estimate of her annual delivery charge over a five-year period. Tr. 59, 72; PGW Exhs. 1 & 4.

24. The Complainant read the full contents of the January 4, 2018 agreement letter. Tr. 44.

25. On January 4, 2018, the Complainant signed the agreement letter agreeing to pay \$4,584.00 to have gas service installed at the service address. Tr. 30, 37-38, 43, 87; PGW Exh. 1.

26. On February 12, 2018, the Complainant paid the \$4,584.00 fee to have gas service installed at the service address. Tr. 45, 77; PGW Exh. 4.

27. In March 2018, PGW installed gas service at the service address. Tr. 29.

### DISCUSSION

The Complainant alleged that PGW charged her excessively for installation of gas service at the service address. PGW maintained that it charged the Complainant for installation in accordance with its Commission-approved tariff.

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<sup>3</sup> Although the Complainant testified that PGW quoted her a price of \$4,594 for installation, PGW Exh. 1, which is a January 4, 2018, letter from PGW to the Complainant regarding service installation, indicates that she will be required to pay \$4,584 for installation.

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 her 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).

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Telephone Co. of Pennsylvania*, 32 Pa.Comm. 319, 379 A.2d 339(1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 63 Pa.Comm. 238, 437 A.2d 1067(1981); *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281(Pa.Cmwlth. 1995).

Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 140 Pa.Comm. 599, 594 A.2d 816(1991); *alloc. den.*, 529 Pa. 670, 605 A.2d 335(1992), 66 Pa.C.S.A. § 316.

Rule 10.1.A of Respondent's Gas Service Tariff – Pa P.U.C. No. 2 enjoys all of these legal presumptions.

In the present case, the Complainant challenged the \$4,584.00 fee PGW required her to pay to have gas service installed at the service address. The Complainant maintained that PGW overcharged her for installation because, although there is a concrete patio between her home and the gas main, PGW did not have to substantially damage the patio in order to install gas service. However, the Complainant did not offer anything beyond her own opinion to demonstrate that PGW overcharged her for service installation. 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 assertion, 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).

In response to the Complainant's assertion that she was overcharged for installation of gas service, PGW established that it calculated the cost of installation in

accordance with its Commission-approved tariff. Regarding extension of service, PGW's Gas Service tariff provides in pertinent part:

The Company will furnish and install at no cost to the Customer or developer, delivery main and service-delivery pipe of an amount up to five times the anticipated annual Delivery Charge, as set forth in this Gas Service Tariff, and the Customer or developer shall pay a customer contribution for any costs in excess of this allowance.

Gas Service Tariff – Pa.P.U.C. No 2, Rule 10.1.A.

PGW determined that to connect the Complainant to the main gas line, it would have to run 20 feet of 1&1/4-inch diameter piping from the gas main to the service address. Tr. 67; PGW Exh. 4. The cost per foot of 1&1/4-inch diameter piping, including materials, time and labor, is \$362.10. Tr. 68; PGW Exh. 4. PGW determined the overall cost to install service at the service address to be \$7,242.00 (20 feet of pipe x \$362.10 per foot = \$7,242.00). Tr. 81; PGW Exh. 4. In accordance with Rule 10.1.A of PGW's tariff, PGW determined the Complainant's anticipated annual delivery charge for the following 5-year period, based on the house heater she installed and the meter charge, to be \$2,658.00. Tr. 64-65, 69, 71, 76; PGW Exh. 4. PGW used the \$2,658.00 5-year anticipated annual delivery charge to offset the \$7,242.00 total cost of installation of gas service, ultimately requiring the Complainant to pay \$4,584.00 to have service installed. Tr. 59, 64, 71-72, 76; PGW Exhs. 1 & 4.

The record demonstrates that the Complainant read the full contents of the January 4, 2018, agreement letter detailing the cost of gas service installation. Tr. 44. The record further demonstrates that the Complainant signed the agreement letter agreeing to pay \$4,584.00 to have gas service installed at the service address. Tr. 30, 37-38, 43, 87; PGW Exh. 1. Since the Complainant was not able to offer anything to demonstrate that PGW charged her incorrectly for gas service installation under its Commission-approved tariff, or that PGW's Commission-approved tariff is unreasonable, I cannot conclude that PGW overcharged her for installation. Accordingly, the Complainant's Complaint is denied.

## 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. A public utility's Commission-approved tariff has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Telephone Co. of Pennsylvania*, 32 Pa. Commw. 319, 379 A.2d 339(1977); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 63 Pa. Commw. 238, 437 A.2d 1067(1981); *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281(Pa. Commw, 1995).

5. Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 140 Pa. Commw. 599, 594 A.2d 816(1991); *alloc. den.*, 529 Pa. 670, 605 A.2d 335(1992), 66 Pa.C.S.A. § 316.

6. Complainant presented no evidence that Rule 10.1.A. of Respondent's Gas Service Tariff – Pa P.U.C. No. 2 is unreasonable, or that Respondent charged her excessively for gas service installation.

