

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Madelene Jacob

v.

Philadelphia Gas Works

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C-2018-3002464

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the formal Complaint of Madelene Jacob against Philadelphia Gas Works because the Public Utility Commission does not have jurisdiction to grant monetary damages and because she failed to meet her burden of demonstrating that Philadelphia Gas Works charged her incorrectly for service.

HISTORY OF THE PROCEEDING

On May 19, 2018, Madelene Jacob (Complainant or Ms. Jacob) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. Jacob made two separate claims. First, Ms. Jacob alleged PGW damaged valves in her home during a service call and requested the Commission order PGW to replace the valves and/or pay for their replacement. Second, Ms. Jacob alleged PGW overbilled her on January 13, 2018 and February 13, 2018.

This matter is the appeal of a decision from the Bureau of Consumer Services (BCS) dated March 1, 2018, at Case No. 3589986, which closed the case without a decision.

On June 22, 2018, PGW filed an Answer to the Complaint denying that the Complainant was charged incorrectly for service. PGW also denied that there are reliability, quality or safety problems with the utility service to the Complainant.

By Hearing Notice dated June 29, 2018, an Initial In-Person Hearing was scheduled for August 28, 2018, at 10:00 a.m. and the matter was assigned to me.

A Prehearing Order was issued on July 3, 2018, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On July 5, 2018, the Complainant requested the hearing be changed to a telephonic hearing due to her physical disability. Counsel for PGW did not oppose the request and I granted it by Order issued on July 24, 2018.

By Corrected Hearing Notice dated July 24, 2018, the Initial Hearing scheduled for August 28, 2018 at 10:00 a.m., was changed from an In-Person Hearing to a Call-In Telephonic Hearing.

The hearing convened as scheduled on August 28, 2018. The Complainant appeared *pro se* and testified on her own behalf. The Complainant did not offer any exhibits.

The Respondent appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of Joyshalyn Moore, a Customer Review Officer at PGW. During the hearing, the Respondent offered the following eight exhibits, all of which were entered into the record:

- PGW 1: Field Activity Report for 1/9/18 (1 page)
- PGW 2: Field Activity Report for 1/14/18 (1 page)
- PGW 3: Field Activity Report for 3/12/18 (1 page)
- PGW 4: Field Activity Report for 3/14/18, 9:19 a.m. (1 page)
- PGW 5: Field Activity Report for 3/14/18, 11:15 a.m. (1 page)
- PGW 6: May 10, 2018 Risk Management Letter (1 page)
- PGW 7: Service Agreement Statement of Account (2 pages)
- PGW 8: Monthly Bills for 2/11/17, 1/13/18, 2/13/18, and 3/14/18 (13 pages)

The record in this case consists of an 85-page transcript and eight exhibits. The record closed on September 28, 2018, when I received a copy of the transcript.

FINDINGS OF FACT

1. The Complainant is Madelene Jacob.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides alone at 4247 Cottman Avenue, Philadelphia, PA 19135 (Service Address). Tr. 13-14.
4. The Complainant has received gas utility service from PGW since 2002. Tr. 14.
5. The Service Address is heated by a hot water radiator system that runs on gas. Tr. 22; PGW 1.
6. On January 9, 2018, a PGW technician visited the Service Address on a parts and labor order and found a cracked radiator that leaked all of the water out of the boiler. Tr. 41-42; PGW 1.

7. The PGW technician issued a hazard tag, left the system off, and referred the Complainant to a contractor to repair the heating system. Tr. 41-42; PGW 1.

8. On January 14, 2018, a PGW technician visited the Service Address on a parts and labor order and determined the system needed to be bled, so he referred the Complainant to a contractor. Tr. 44-45; PGW 2.

9. On March 12, 2018, a PGW technician visited the Service Address on a possible gas leak order but found no gas leak readings. Tr. 46; PGW 3.

10. On March 14, 2018, at 9:19 a.m., a PGW technician visited the Service Address and was told to leave by the Complainant. Tr. 47; PGW 4.

11. On March 14, 2018, at 11:15 a.m., the PGW technician returned to the Service Address along with a Supervisor and replaced the shut-off valve for the automatic gas lanes in the basement, pursuant to a parts and labor contract, as a courtesy free-of-charge. Tr. 47; PGW 5.

12. PGW billed the Complainant for usage at the Service Address on the following relevant dates:

Date of Bill	Dates of Service		CCF¹ Usage	Number of Heating Degree Days²	Bill Amount
	From	To			
1/12/2017	12/8/2016	1/10/2017	131	992	\$181.93
2/11/2017	1/11/2017	2/9/2017	112	679	\$180.33
1/13/2018	12/8/2017	1/11/2018	186	1189	\$254.10
2/13/2018	1/12/2018	2/9/2018	94	828	\$154.12

¹ CCF = Cubic Feet of Gas.

² A heating degree day is a measurement of how much the average temperature on a particular day is below 65°F. Tr. 54-55.

13. The Complainant sometimes shuts her heat off for a week to ten days. Tr. 30-31.

14. The Complainant disputes her January 13, 2018 and February 13, 2018 bills. Tr. 23.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving that she is entitled to the requested relief. 66 Pa.C.S. § 332(a). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *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); *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. 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).

In the Complaint, Ms. Jacob made two separate claims. First, Ms. Jacob alleged PGW damaged valves in her home during a service call made pursuant to a parts and labor contract with PGW. Ms. Jacob requested the Commission order PGW to replace the valves and/or pay for their replacement. Second, Ms. Jacob alleged PGW overbilled her on January 13, 2018 and February 13, 2018, because these bills were higher than the bills for the same months in the previous year. I will address each claim separately.

Damaged Valves

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

It is well settled law that the Commission is not authorized to grant monetary damages. *Elkin v. Bell*, 420 A.2d 371 (Pa. 1980); *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 425 (Pa. Cmwlth. 1996). Furthermore, the Commission's authority is limited to regulation of public service as opposed to private service. *Felix v. Pa. Pub. Util. Comm'n*, 146 A.2d 347 (Pa. Super. 1958); *Borough of Ambridge v. Pa. Pub. Serv. Comm'n*, 165 A. 47 (Pa. Super. 1933). Private services that supplement the public service provided by a utility do not fall within the Commission's jurisdiction. *Anderson v. Philadelphia Gas Works*, Docket No. F-00825712 (Order entered August 30, 2002). In *Anderson*, the complainant alleged, *inter alia*, that the

utility violated a parts and labor agreement or warranty agreement by billing the complainant service charges for repair of her gas stove. The Commission ruled that the repair contract/warranty did not involve a law, regulation or order that the Commission had jurisdiction to administer. The Commission ruled that servicing the complainant's stove was not an essential part of the utility's public gas service but rather a supplemental service incidental to its primary gas utility service. The Commission reasoned that the utility's obligation to service the complainant's stove was defined by the terms of the private agreement between the utility and the complainant, not by the public rights embodied in the Public Utility Code. Thus, the Commission had no authority to rule on that type of private agreement.

Based on the foregoing, the Commission lacks jurisdiction over Ms. Jacob's claim that PGW damaged valves in her home during a service call made pursuant to a parts and labor contract. Thus, the first claim of the Complainant in this case must be dismissed.

High Billing Dispute

The burden of proof for high billing 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; *see also Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011).

In this case, the Complainant disputes her January 13, 2018 and February 13, 2018 bills as abnormally high. During the hearing, Ms. Jacob testified that she believes when PGW fixed her valve as a courtesy, the technicians "did something to the meter" to increase her bill in order to recoup the money for fixing the valve. Tr. 16, 20-21, 32. However, this allegation is demonstrably untrue since PGW replaced the valve on March 14, 2018, which is two months *after* Ms. Jacob already received the disputed bill on January 13, 2018, and one month *after* she received the other disputed bill on February 13, 2018.

Additionally, PGW was able to present credible evidence explaining why the Complainant's January 13, 2018 bill was higher than the previous year's bill for the same time period.³ First, PGW pointed out that the Complainant's heating system was not operating correctly during the time period in question. On January 9, 2018, a PGW technician visited the Service Address and found a cracked radiator that leaked all of the water out of the boiler. The PGW technician issued a hazard tag, left the system off, and referred the Complainant to a contractor to repair the heating system. It is true there is no record evidence of the duration of the operating system damage. However, even if the leak occurred on the date discovered, January 9, 2018, that damage would have impacted the usage of gas causing it to increase.

Second, PGW established that the weather during the disputed time period was colder than the previous year. A heating degree day is a measurement of how much the average temperature on a particular day is below 65°F. Thus, the higher the number of heating degree days, the colder the weather was during that particular period of time. The colder the weather, the harder a heater has to work to maintain the temperature. Here, in the previous year, for the

³ I will address the February 13, 2018 separately since it was actually *lower* than the previous year.

time period of December 8, 2016 to January 10, 2017, there were **992 Heating Degree Days** and the Complainant used 131 CCF of gas, which resulted in a bill of \$181.93. In the current disputed time period of December 8, 2017 to January 11, 2018, there were **1189 Heating Degree Days** and the Complainant used 186 CCF of gas, which resulted in a bill of \$254.10.

It is clear from the foregoing that the Complainant's bill was higher on January 13, 2018, not because anyone tampered with her meter, but because she used more gas since the weather was colder and her heater was not functioning properly.

Finally, although the Complainant also disputes her February 13, 2018 bill, this bill was actually lower than the previous year's bill.⁴ Thus, the only reason to dispute this bill would be based on the belief that PGW tampered with the meter in order to recoup money for the valve replacement, which has already been shown to be impossible.

Based on the foregoing, I find that the Complainant has failed to carry her burden of proving that her gas bills are not correct as rendered and that she is not consuming the gas she is being charged for. Accordingly, the Complaint is dismissed 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. § 701.
2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 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

⁴ Compare the time period of January 11, 2017 to February 9, 2017, where there were 679 Heating Degree Days and the Complainant used 112 CCF of gas, which resulted in a bill of \$180.33, with the current disputed time period of January 12, 2018 to February 9, 2018, where there were 828 Heating Degree Days and the Complainant used 94 CCF of gas, which resulted in a bill of \$154.12.

(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. The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

5. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm'n*, 43 A.2d 348 (Pa. Super. 1945).

6. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

7. Subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), *alloc. denied*, 637 A.2d 293 (Pa. 1993).

8. The Commission is not authorized to grant monetary damages and has no jurisdiction over the Complainant's claim for damaged valves. *Elkin v. Bell*, 420 A.2d 371 (Pa. 1980); *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 425 (Pa. Cmwlth. 1996).

9. The Commission's authority is limited to regulation of public service as opposed to private service. *Felix v. Pa. Pub. Util. Comm'n*, 146 A.2d 347 (Pa. Super. 1958); *Borough of Ambridge v. Pa. Pub. Serv. Comm'n*, 165 A. 47 (Pa. Super. 1933); *Anderson v. Philadelphia Gas Works*, Docket No. F-00825712 (Order entered August 30, 2002).

10. 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

