

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anita Hutcherson

v.

Philadelphia Gas Works

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C-2018-3004591

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

The Complainant did not establish that Philadelphia Gas Works incorrectly billed her and therefore this Complaint will be dismissed.

**HISTORY OF THE PROCEEDING**

On August 21, 2018, Anita Hutcherson (Complainant or Ms. Hutcherson) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. Hutcherson contends that there are incorrect charges on her bill and that she is charged for more gas than she uses. In an attachment to the Complaint, Ms. Hutcherson states that when she first moved into her efficiency (service address), her monthly bill was \$35-\$60 and then increased to \$95 per month. Because her gas bill was getting higher, she thought that perhaps someone was using the gas and asked PGW to look at her gas line. She was told by PGW that there was no problem and no one else was using her gas service. She questions why when all she uses gas for is a gas stove, she is receiving some monthly bills for up to \$100 or more. Also attached to the Complaint was a copy of a document from PGW showing monthly billing amounts from October 15, 2015, until

December 15, 2017, ranging from about \$16.00 to over \$100.00. The Complainant also avers that she had to move out of her apartment because of this issue with PGW.

On October 3, 2018, PGW filed an Answer stating that the Complainant has PGW residential gas heat. PGW also denied that there are incorrect charges on the PGW bills sent to the Complainant at the service address. PGW also stated that a PGW technician visited the service address and determined that there was no foreign load and the bills sent to the Complainant are correct. PGW also states that the Complainant enrolled in Budget Billing on March 12, 2018, that the Budget Billing agreement was broken when a down payment was not made and that the Complainant transferred her service to a new address on April 17, 2018.

A Hearing Notice dated October 31, 2018, advised the parties that an initial hearing was scheduled for November 28, 2018, at 10:00 a.m.

A Prehearing Order was also issued on October 31, 2018, reminding the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The initial hearing convened as scheduled. Ms. Hutcherson appeared *pro se* and did not offer any exhibits. PGW was represented by Gabriela Christlieb, Esq. Four exhibits were offered on behalf of PGW. PGW also presented the testimony of one witness, Tiffany Jones, a PGW Senior Customer Review Officer.

All exhibits were admitted into the record. The record consists of an 85-page transcript and four exhibits. The record closed on January 9, 2019, upon receipt of the transcript.

### FINDINGS OF FACT

1. The Complainant is Anita Hutcherson, who was a PGW customer at 3652 North 18th Street, Apartment 2-F, Philadelphia, Pennsylvania.<sup>1</sup> (Tr. 7).

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<sup>1</sup> At the time of the hearing, Ms. Hutcherson had moved out of state.

2. The Respondent is Philadelphia Gas Works.
3. Ms. Hutcherson lived on 18th Street (service address) from September of 2015 until March of 2017. (Tr. 6-7).
4. No one else lived with Ms. Hutcherson on 18th Street. (Tr. 7).
5. Ms. Hutcherson used gas at the service address only for a gas stove. (PGW Exhibit 2; Tr.8).
6. The Complainant cooked at the service address only about three times per week. (Tr. 6, 9).
7. The service address is an efficiency apartment. (Tr. 10).
8. The Complainant did not use gas for hot water because the owner paid for that service. (Tr. 8).
9. Ms. Hutcherson's monthly bills for 18th Street ranged from \$16.00 per month to over \$100.00 per month. (PGW Exhibit 1).
10. While living on 18th Street, the Complainant contacted PGW and asked the company to send someone to check whether someone else was using her gas service. (Tr. 8).
11. The PGW technician found no foreign load and that only the Complainant's stove was connected to her gas line. (T. 7-8).
12. After leaving 18th Street, Ms. Hutcherson moved to a one-bedroom apartment on Erie Avenue in Philadelphia. (Tr. 13-14).
13. The Erie Avenue Apartment was larger than her efficiency on 18th Street, with two additional rooms. (Tr. 14).

14. On Erie Avenue, the Complainant's PGW bills ranged from \$18.00 to approximately \$22.00 per month. (PGW Exhibit 1, p. 5).

### DISCUSSION

The Pennsylvania Public Utility Code (“Code”) requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission. . .

66 Pa.C.S. § 1501. Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code, 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission.

66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing 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.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be

supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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.Cmwlt. 2001).

Ms. Hutcherson contends that she was incorrectly charged by PGW for gas that she did not use. The service address is an efficiency apartment. (Tr. 10). She credibly testified that she lived alone while living on 18th Street and only used gas for cooking. (Tr. 8). She credibly testified that she cooked only about three times per week given her work schedule. (Tr. 9). The owner paid for heating water at the residence. (Tr. 8).

The Complainant questioned why her monthly gas charges would fluctuate from \$40 per month to \$90 and \$120 dollars per month. (Tr. 6,7 8). PGW records show that Ms. Hutcherson's monthly charges ranged from \$16.00 per month to over \$100.00 per month. (PGW Exhibit 1). After leaving 18th Street, Ms. Hutcherson moved to a one-bedroom apartment on Erie Avenue in Philadelphia. (Tr. 13-14). It was larger than her efficiency on 18th Street, with two additional rooms. (Tr. 14). There her monthly charges ranged from \$18.00 to approximately \$22.00 per month. (PGW Exhibit 1, p. 5).

As previously noted, a complainant has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Where a complainant alleges a high bill, the Complainant's burden of proof regarding the high bill claim is governed by *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980). In *Waldron*, the Commission concluded that a complainant may establish a *prima facie* 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 evidence shifts to the Respondent. If the Respondent fails to rebut the Complainant's evidence, then the Complainant prevails. If the Respondent provides evidence to rebut the Complainant's *prima facie* case, the burden of going forward with the evidence shifts back to the Complainant.

Also, in *Milkie v. Pa. Pub. Util. Comm'n*, 768 A. 2d 1217 (Pa. Cmwlth. 2001) (*Milkie*), the Commonwealth Court expanded the Commission's ruling in *Waldron*. The Commonwealth Court found that the Commission's requirement that the Complainant must establish certain specific elements to make out a *prima facie* case was too restrictive. It held 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. In making its determination, the Commission 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 (Order entered October 13, 2010); *Thomas v PECO Energy Co.*, Docket No. C-2010-2187197 (Order entered November 15, 2011).

Ms. Hutcherson established that the number of occupants of the household had not changed when her monthly gas charges fluctuated and that the potential for energy utilization is low given that she only used gas for a stove and did not cook every day. Billing statements establish that her monthly charges for service fluctuated significantly. Further supporting her claim that she was incorrectly billed by PGW for 18th Street is that when she moved into a larger one-bedroom apartment on Erie Avenue, where she again used gas only for a stove, her PGW monthly charges were lower. A *prima facie* case of high bills was established by the Complainant.

Referring to the Complainant's statement of account, Ms. Bernard, a 14-year employee of PGW in the customer review unit, noted in her testing that the Complainant's monthly charges were higher during winter months, suggesting that the stove was used for heating. This is reflected in the degree days (DDD's - the higher the number, the colder the

temperature) and CCF (amount of gas used). The following chart contains information about dates at issue while the Complainant resided on 18th Street:

Date	DDDs	CCFs	Monthly Charge	Billing Days
10/15/15	55	10	\$36.82	47
11/17/15	235	24	\$45.10	30
12/15/15	467	43	\$71.55	31
1/19/16	654	46	\$74.18	32
10/14/16	54	11	\$28.06	29
11/15/16	314	29	\$54.55	32
12/15/16	595	29	\$52.25	30
1/19/17	979	48	\$76.67	35
10/17/17	22	5	\$21.17	29
11/15/17	310	47	\$80.12	32
12/15/17	647	76	\$116.61	30
1/19/18	1211	115	\$165.28	35

The pattern established is that as the days grew colder, Ms. Hutcherson used more CCFs. A PGW technician determined that there was no foreign load and there was no leak in the Complainant's gas line. (PGW 2). While Ms. Hutcherson's gas service was only connected to her gas stove, this pattern suggests that she periodically used her stove for additional heating. Ms. Bernard testified that based on her experience, it is not uncommon for customers to use their gas stoves for extra heat in the winter months. Ms. Hutcherson is correct that, as shown on the above chart and the billing statement (PGW Exhibit 1), her monthly charges did begin to increase to over \$100.00. However, this increase in her monthly charges occurred in the winter months when her usage was higher. A review of the chart shows that this is not inconsistent with measurements and charges in other months.

The Complainant's Statement of Account also shows that the Complainant's balance was often over \$100.00. (PGW Exhibit 1) Customer Review Officer Patricia Bernard testified that the Complainant's balance is an accumulation of unpaid bills and late charges. (Tr.

23). A review of the account statement supports a finding that where the Complainant had balances of over \$100 even in low usage months, this was often due to a snowballing balance, not usage or individual month billing. For example, on 3/16/16, the Complainant's monthly bill was \$49.69 but her balance was \$232.90. (PGW Exhibit 1).

Also, although Ms. Hutcherson did not receive a PGW bill for over \$100 when she lived on Erie Avenue, the PGW bills are not inconsistent with her bills for 18th Street. The Complainant lived on Erie Avenue from May of 2018 until October of 2018. She was not on Erie Avenue during the winter months and therefore lower monthly charges for her non-winter months on Erie Avenue are consistent with non-winter months on 18th Street.

The record did not establish that PGW erred in billing Ms. Hutcherson and therefore she cannot prevail on this claim.

#### CONCLUSIONS OF LAW

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

2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).

3. The Complainant established a prim facie case of incorrect billing. *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980); *Milkie v. Pa. Pub. Util. Comm'n*, 768 A. 2d 1217 (Pa. Cmwlth. 2001).

4. Philadelphia Gas Works presented rebuttal evidence of usage that the Complainant did not overcome. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 ; *Bennett v Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v PECO Energy Co.*, Docket No. C-2010-2187197 (Order entered November 15, 2011).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Anita Hutcherson against Philadelphia Gas Works at Docket No. C-2018-3004591, is dismissed.
2. That the remaining claims in the Formal Complaint filed by Anita Hutcherson against Philadelphia Gas Works at Docket No. C-2018-3004591 are denied and dismissed.
3. That the Secretary mark this docket closed.

Date: February 21, 2019

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/s/  
Darlene D. Heep  
Administrative Law Judge