

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Magaly Ugarte	:	
	:	
v.	:	C-2018-3005588
	:	
UGI Utilities Inc.	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Complaint since the Complainant did not meet her burden of proof of establishing that UGI Utilities Inc. issued incorrect bills for service at the service address.

HISTORY OF THE PROCEEDING

On October 17, 2018, Magaly Ugarte (Complainant) filed a formal Complaint (Complaint) against UGI Utilities Inc. (UGI or Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant placed a checkmark in the box indicating “[i]ncorrect charges are on my bill.” Under the “requested relief” section, the Complainant alleged that her house at 213 N. 8th Street, Easton, PA (service address) was not occupied from January 2018 through August 31, 2018, and that bills she received for service during this period are incorrect. The Complainant further alleged that she requested to have her service shut off in June 2018, and that it was not shut off until August 2018. The Complainant requested a credit for the excessive charges during this period.

On November 12, 2018, the Respondent filed an Answer denying that there are incorrect charges on the Complainant's bill.

By Call-In Telephonic Hearing Notice dated November 26, 2018, a telephonic hearing was scheduled for January 14, 2019 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on November 26, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and 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 telephonic hearing convened as scheduled on January 14, 2019. Felix Castaneda, the Complainant's husband, appeared *pro se* and testified. The Respondent appeared and was represented by Larry Crayne, Esq., who presented the testimony of the following witnesses: Amy Wynn, a UGI Senior Compliance Representative; Joseph Pautz, a UGI Field Technician; and Joshua Ziegler, a UGI Field Technician. The Respondent offered five exhibits (R-1 through R-5) which were all admitted into the record.

The record consists of a 42-page transcript and five exhibits. The record closed on February 13, 2019, when I received a copy of the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Magaly Ugarte.
2. The Respondent in this proceeding is UGI Utilities Inc.
3. The Complainant's Complaint concerns service to 213 North 8th Street, Easton, Pa 18042 (service address). Tr. 10.

4. Felix Castaneda is the Complainant's husband and co-owner of the service address. Tr. 10.

5. The Complainant and Mr. Castaneda own the service address as a rental property. Tr. 16.

6. Mr. Castaneda was not present at the service address at any time between January 2018 and August 6, 2018. Tr. 13, 25.

7. Mr. Castaneda never personally contacted UGI regarding the account for service at the service address between January 2018 and August 6, 2018. Tr. 25.

8. Gas appliances at the service address include a gas heater, a gas oven, and a gas water heater. Tr. 13, 16.

9. On January 18, 2018, the Complainant contacted UGI to request gas service at the service address. Tr. 11, 29.

10. On January 21, 2018, a UGI Field Technician visited the service address to re-establish and turn on the gas. Tr. 37; R-3.

11. UGI will "red-tag" a gas appliance whenever a Field Operations employee observes or encounters a condition that is a clear and immediate threat to the safety or health of the occupants of the building. Tr. 35; R-5.

12. UGI will "orange-tag" a gas appliance whenever a Field Operations employee observes or encounters a condition where the appliance or fuel line cannot be activated at the time of a turn-on or reactivation of service. Tr. 36; R-5.

13. The Field Technician turned on the gas after plugging an open fuel line at the oven, since the oven was not hooked up. Tr. 38; R-3.

14. The Field Technician “orange-tagged” the heater and water heater because neither appliance could be started at that time since there was no water in either system. Neither units’ pilot lights were lit at this time. Tr. 38-39; R-3.

15. On an unspecified date in July 2018, the Complainant contacted UGI to dispute the bills for gas usage at the service address. Tr. 29.

16. On July 19, 2018, a UGI Technician visited the service address to read the Complainant’s meter; the Technician could not gain access to the property at that time. Tr. 29.

17. The UGI Technician left a note for the Complainant to call to reschedule the appointment. Tr. 29-30.

18. On August 3, 2018, the Complainant contacted UGI to request that gas service at the service address be disconnected. Tr. 30.

19. UGI scheduled an appointment for August 6, 2018. Tr. 30.

20. On August 6, 2018, a UGI technician visited the service address. Tr. 30.

21. The Field Technician discovered that the pilot light for the house heater was lit during the August 6, 2018 visit. Tr. 34.

22. During the August 6, 2018 visit, the Field Technician observed that the gas water heater had a leak. Tr. 34; R-3.

23. The Field Technician shut the water heater off at the appliance valve and “red-tagged” the unit. Tr. 34-35; R-3.

24. The Field Technician subsequently discovered that gas continued to pass through the water heater appliance valve after it was shut off, prompting him to shut off the gas service at the meter. Tr. 34; R-3.

25. Once the gas service was shut off at the meter, the Field Technician “orange-tagged” the house heater since it could not be lit once the gas supply had been shut off. Tr. 35.

26. On August 7, 2018, UGI issued a letter to the Complainant informing her that the UGI technician who visited the service address on August 6, 2018 found a problem with her water heater, that there was a leak on her fuel line, and that she would have to contact a qualified contractor to make the necessary corrections. Tr. 29; R-4.

27. As of the date of the hearing, the Complainant’s past due balance totaled \$229.25. Tr. 27; R-1.

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. 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 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, Felix Castaneda offered testimony in support of the Complaint rather than the Complainant. Mr. Castaneda is the Complainant's husband and a co-owner of the service address. Tr. 10. Mr. Castaneda was permitted to offer testimony in place of the Complainant since he meets the definition of "customer" set out in 66 Pa.C.S. § 1403.¹

Mr. Castaneda asserted that UGI billed him and his wife inaccurately for service during the months of April, May, June and July of 2018. 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

¹ 66 Pa.C.S. § 1403 defines a "customer," in pertinent part, as "any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested."

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).

Mr. Castaneda asserted that bills for the service address during the months of April, May, June and July of 2018, are inaccurate because no one was using the service address during this period, and because his wife had asked UGI on two separate occasions to shut off the gas service. However, Mr. Castaneda acknowledged that he was not present at the service address at any time between January 2018 and August 6, 2018, and also that he never personally contacted UGI regarding the account for service at the service address during this period. Tr. 25. Moreover, Mr. Castaneda did not offer anything beyond his own assertions to show that a request was made to have gas service shut off prior to August 2018, or that UGI billed him incorrectly during this period. No matter how honest and strong Mr. Castaneda's assertions are, they cannot form a basis for a finding of fact in his favor. Mere bald assertion, personal opinions

or perceptions do not constitute evidence to bolster a claim. *MidAtlantic Power Supply Association of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000), citing *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987). Mr. Castaneda failed to establish a *prima facie* case of high billing.

In response, UGI's witnesses established that the Complainant did not request discontinuance of service until August 3, 2018, the end of the period at issue. Moreover, in response to the Complainant's August 3, 2018 discontinuance request and her claims of incorrect billing, a UGI Field Technician visited the service address on August 6, 2018. During the visit at the service address, the Field Technician observed that the pilot light for the house heater was lit, and that the Complainant's gas water heater had a gas leak. Tr. 34. The Field Technician further observed that gas continued to pass through to the water heater appliance valve even after he shut it off, prompting him to shut off the Complainant's gas service at the meter. *Id.*

As previously noted, Mr. Castaneda did not offer anything beyond his own opinion to support the claims that a request was made to have service shut off at the service address prior to August 2018, or that UGI billed him and his wife incorrectly for service at the service address. Since the record reflects that the Complainant's service was active during the period at issue, that the gas heater and water heater at the service address were operational, that the Complainant did not request discontinuance of service until the end of the period at issue, and that there was an active gas leak on her water heater, I cannot conclude that UGI billed the Complainant incorrectly for service between April and July of 2018. Accordingly, the Complaint must be denied.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), 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 (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. 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. Complainant failed to sustain the burden of demonstrating that there are incorrect charges on the bills for gas service at the service address.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Magaly Ugarte against UGI Utilities Inc. at Docket No. C-2018-3005588 is denied; and

2. That the record at C-2018-3005588 be marked closed.

Date: May 6, 2019

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