

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bree Pate	:	
	:	
v.	:	C-2020-3018807
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This initial decision finds that the Complainant has failed to meet her burden of proof that the Respondent violated the Public Utility Code, Commission regulations or order with respect to her account billing.

HISTORY OF THE PROCEEDING

On February 12, 2020, Bree Pate (Complainant or Ms. Pate) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In the Complaint, Ms. Pate indicated there were a number of issues with her billing.

On March 13, 2020, PGW filed an Answer, denying the material allegations of the Complaint.

On April 30, 2020, a Hearing Notice was issued for an initial call-in telephonic hearing on Wednesday, June 17, 2020, at 10:00 a.m., and the matter was assigned to me.

The hearing convened as scheduled on June 17, 2020. The Complainant represented herself and testified on her own behalf. PGW was represented by counsel, Graciela Christlieb, Esquire. PGW also presented the testimony of Adrian Pickney, a customer review officer and offered six exhibits which were entered into the record.

The record closed on June 24, 2020, when I received my copy of the 53-page hearing transcript.

FINDINGS OF FACT

1. The Complainant is Bree Pate, who lives at 1720 North Fifth Street, Apartment 203, Philadelphia, Pennsylvania 19122 (Service Address). Tr. 8.
2. The Respondent is Philadelphia Gas Works.
3. The Service Address is a part of a multi-unit apartment building with five floors. Tr. 23.
4. The Complainant received paper bills from PGW addressed to a different person. Tr. 11.
5. The paper bills that the Complainant received were addressed to “Richard Perez” and were for charges incurred at a different service address. Tr. 22, 30-31; PGW Exh. 6.
6. The paper bills were sent to the Complainant accidentally because the previous tenant of the Service Address, Richard Perez, failed to update his mailing address with PGW after he started service with PGW at a different address. Tr. 31-32.

7. The Complainant also received electronic bills from PGW for her usage at the Service Address. Tr. 34,41; PGW Exh. 3.

8. PGW has no record of the Complainant contacting the Company to inform them that she was receiving paper bills for Richard Perez. Tr. 32-33.

9. PGW was able to correct the mailing issue with Richard Perez's bills after the Complainant filed her formal Complaint. Tr. 33-34.

10. On May 22, 2019, the Complainant made a complaint to PGW regarding an alleged foreign load at the Service Address. Tr. 37; PGW Exh. 2.

11. The Complainant has a gas range and house heater on the gas line for the Service Address. Tr. 38; PGW Exh. 2.

12. The gas meter for the Complainant's apartment is not located inside the unit. Tr. 23-24.

13. PGW does not require that a customer be at home when it investigates a foreign load complaint if the technician does not need access to the apartment or unit to complete the investigation. Tr. 39.

14. On July 31, 2019, a PGW technician investigated Complainant's foreign load complaint at the Service Address and found that there was no foreign load. Tr. 39; PGW Exh. 2.

15. The technician found that gas meter No. 2057534 supplies gas only to the Complainant's unit. Tr. 39; PGW Exh. 2.

16. The Complainant established service recently at the Service Address and therefore does not have a prior usage history at the Service Address. Tr. 39; PGW Exh. 2.

17. The Complainant's total balance with PGW is \$1,685.05, which includes a balance from a previous address (154 North Robinson Street) of \$499.60. Tr. 40; PGW Exh. 1.

18. In the 24-month period from May 8, 2018 to May 8, 2020, the Complainant made 14 payments to her account. Tr. 40; PGW Exh. 1.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the 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. Pa. 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*, 461 A.2d 1234 (Pa. 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).

Billing Issues

The Complainant alleged that she had a number of billing issues related to her account with PGW. Specifically, she indicated that she was receiving bills for another party and that she believed that there was a foreign load at the Service Address. PGW denies that there were any problems with foreign load at the Service Address and that it corrected the issue with the bills.

As a general proposition, neither the Public Utility Code nor the Commission's regulations require public utilities to provide constantly flawless service. The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate, not perfect service. The statute at 66 Pa.C.S. § 1501, provides, in relevant part:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 478 A.2d 947 (Pa.Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.

Id. at 949 (footnote omitted).

The statutory definition of "service" is to be broadly construed.¹ *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa.Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PGW's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

The Complainant contends that there was a foreign load at the Service Address. However, the Complainant did not present any evidence beyond her own testimony that this was taking place. It is well settled, "[m]ere bald assertions ... do not constitute evidence." *Mid-Atlantic 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*, 516 Pa. 75, 532 A.2d 12 (1987); see also, *Steffy's Pattern Shop v. Frontier Communications of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

As background, the Service Address is a part of a multi-unit apartment building with five floors. Tr. 23. The Complainant has a gas range and house heater on the gas line for the Service Address. Tr. 38; PGW Exh. 2. The gas meter for the Complainant's apartment is not located inside the unit. Tr. 23-24.

PGW's witness, Ms. Pinkney, testified that on May 22, 2019, the Complainant made a complaint to PGW regarding an alleged foreign load at the Service Address. Tr. 37;

¹ "Service." Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . 66 Pa.C.S. § 102.

PGW Exh. 2. On July 31, 2019, a PGW technician conducted an investigation at the Service Address and found that there was no foreign load. Tr. 39; PGW Exh. 2. The technician found that gas meter No. 2057534 supplies gas only to the Complainant's unit. Tr. 39; PGW Exh. 2. PGW does not require that a customer be at home when it conducts an investigation if the technician does not need access to the apartment or unit to complete the investigation. Tr. 39. The Complainant had only established service recently at the Service Address and therefore did not have a prior usage history at the Service Address. Tr. 39; PGW Exh. 2.

Ms. Pinkney also testified that the Complainant's total balance with PGW is \$1,685.05, which includes a balance from a previous address (154 North Robinson Street) of \$499.60. Tr. 40; PGW Exh. 1. In the 24-month period from May 8, 2018 to May 8, 2020, the Complainant made 14 payments to her account. Tr. 40; PGW Exh. 1.

In this matter, the Company presented testimony and evidence that it investigated the Complainant's claim that there was foreign load at the Service Address. The technician did not find any evidence of a foreign load and that the gas meter was only attached to the appliances in her unit. While the Complainant was not present for the investigation, PGW does not require that the customer be on the premises when the technician does not need access to the specific apartment or unit. There is nothing in the record to support the Complainant's allegations that there was a foreign load at the Service Address. As such, the Complainant's Complaint in this regard must be dismissed.

The Complainant also indicated that she received paper bills from PGW addressed to a different person. Tr. 11. The paper bills that the Complainant received were addressed to the previous tenant, Richard Perez, and were for charges incurred at a different service address. Tr. 22, 30-31; PGW Exh. 6. The paper bills were sent to the Complainant accidentally because Mr. Perez failed to update his mailing address with PGW when he started service with PGW at a new service address. Tr. 31-32. At the same time, the Complainant received electronic bills from PGW for her usage at the Service Address. Tr. 34,41; PGW Exh. 3. PGW has no record of the Complainant contacting the Company to inform them that she was

receiving bills for Richard Perez. Tr. 32-33. PGW was able to correct the mailing issue with Richard Perez's bills after the Complainant filed her formal Complaint. Tr. 33-34.

Since PGW has made the correction to the account so that the Complainant does not receive Mr. Perez's paper bills, the matter is now moot. As such, the portion of the Complainant's Complaint must be dismissed.

Based on the above, the Complainant has not met her burden of establishing that there were any violations with how PGW handled the Complainant's account or her complaint regarding the allegation of a foreign load. There is nothing in the record to indicate that PGW violated any statute, regulation or order in this regard and the Complaint must be dismissed.

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. The Public Utility Code at 66 Pa.C.S. § 1501 requires public utilities to provide reasonable and adequate service.
5. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm'n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

