

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Janice Bolden

v.

Philadelphia Gas Works

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F-2020-3019191

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses a complaint filed by a residential customer against a natural gas distribution utility for failure to prove by a preponderance of evidence that her account was incorrectly charged by the utility.

**HISTORY OF THE PROCEEDING**

On February 27, 2020, Janice Bolden (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), Docket Number F-2020-3019191. The Complainant disputed charges on her account that appeared on her account in February 2019 for an unoccupied unit. The Complaint was a timely appeal of a decision by the Commission's Bureau of Consumer Services (BCS) in BCS case number 3697816 dated January 10, 2020.

The Complaint was served on respondent by the Commission's Secretary's Bureau on March 11, 2020. Respondent served an Answer on March 31, 2020, denying it had erroneously billed the customer.

On May 7, 2020, a Hearing Notice was issued scheduling an initial telephonic hearing on July 16, 2020.

On May 26, 2020, I issued a Prehearing Order. The Prehearing Order advised the parties with respect to Commission procedure, Complainant's burden of proof, requests for continuances, required numbers and marking of proposed exhibits, attorney representation, subpoena procedures, discovery, the availability of an interpreter, and the Commission's policy favoring settlement.

A hearing was held on July 16, 2020, at which time Respondent presented the testimony of one witness, who sponsored PGW Exhibits 1-4 which were admitted into the record. PGW Exhibit 1 was a statement of account. PGW Exhibit 2 showed usage analysis. PGW Exhibit 3 was a record relating to meter tests and Exhibit 4 was the BCS Decision.

Complainant presented evidence in the form of her own testimony and she offered Complainant Exhibit 1, a timeline, into evidence. This exhibit was not admitted as Respondent's objection to the exhibit was sustained. A transcript of the proceeding containing 35 pages was filed with the Commission on July 29, 2020, and the record closed on that date. This case is ripe for a decision.

#### FINDINGS OF FACT

1. Complainant is Janice Bolden.
2. Respondent is Philadelphia Gas Works.

3. Complainant has been a customer of Respondent, receiving natural gas service at 659 West Park Lane, Philadelphia, Pennsylvania, since 2014. N.T. 8.

4. The premises at 659 West Park Lane consists of at least two units, and the first-floor unit is the service property at issue. N.T. 8-10.

5. The first-floor unit has been vacant since November 2018; however, Complainant has never requested service be terminated and she still holds an active account with PGW. N.T. 10-11.

6. Complainant began to complain to PGW in February 2019 about her bills regarding the first-floor unit because she believed the bill of \$185 for January -February 2019 was high compared to other months and no one was living in the apartment at the time. N.T. 10-12.

7. PGW Witness Adrian Pinkney is PGW's Customer Review Officer. N.T. 19.

8. As of the date of hearing, Complainant had an outstanding balance of \$451.83 on her account. N.T. 19-20, PGW Exhibit 1.

9. Consumption of natural gas at the service property decreased in January – February 2019 compared to January -February 2018. N.T. 20, PGW Exhibit 2.

10. On February 28, 2019, PGW tested the service property's meter and found it to be at 99% accuracy, which is within the Pennsylvania Public Utility Code's statutory guidelines for accuracy. N.T. 28, PGW Exhibit 3.

### DISCUSSION

As the proponent of a Commission order, Complainant has the burden of proof in this case. 66 Pa.C.S.A. § 332(a). The “burden of proof” is composed of two distinct burdens: the

burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the party (initially, this will usually be the complainant, applicant, or petitioner, as the case may be) with the burden of production fails to introduce sufficient evidence the opposing party is entitled to receive a favorable ruling. That is, the opposing party would be entitled to a compulsory nonsuit, a directed verdict, or a judgment notwithstanding the verdict. Once the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to his position. The burden of production goes to the legal sufficiency of a party's case.

Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his favor. “[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.” *Riedel v. County of Allegheny*, 159 Pa.Cmwlth. 583, 591, 633 A.2d 1325, 1328 n.11 (1993). The burden of persuasion, usually placed on the complainant, applicant, or petitioner<sup>1</sup>, determines which party must produce sufficient evidence to meet the applicable standard of proof. *Hurley, supra*. It is entirely possible for a party to successfully bear the burden of production but not be entitled to a verdict in his favor because the party did not bear the burden of persuasion. Unlike the burden of production, the burden of persuasion includes determinations of credibility and acceptance or rejection of inferences. Even un rebutted evidence may be disbelieved. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa.Cmwlth. 2005), *app. denied*, 586 Pa. 776, 895 A.2d 1264 (2006). In order to bear the

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<sup>1</sup> See, 66 Pa.C.S.A. §§ 332(a), 315.

burden of proof and be entitled to a decision in his favor, a party must bear both the burden of production and the burden of persuasion.

To establish a sufficient case and satisfy the burden of proof, a complainant must show that respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. 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*, 134 Pa.Cmwlth. 218, 221-222, 578 A.2d 600, 602 (1990), *app. denied*, 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*, 67 Pa.Cmwlth. 597, 447 A.2d 1100 (1982), *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 154 Pa.Cmwlth. 21, 623 A.2d 6 (1993), 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 531 Pa. 287, 612 A.2d 434 (1992). 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. Dep't of Public Welfare*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

The criteria to be used in evaluating a high billing complaint, such as this instant Complaint, was established in *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980). When a complainant has presented testimony that the number of occupants in the household has not changed, that the potential for energy utilization was low, and that the complainant's prior billing history showed no previous abnormalities, the complainant has established a *prima facie* case which, if unrebutted by a utility, would entitle complainant to prevail. The results of a

meter test are an important factor but may be insufficient to rebut the case. However, if the respondent utility has placed into the record testimony in addition to the meter test results to rebut this *prima facie* case, a complainant must meet the now shifted burden of going forward by a preponderance of the evidence. *Replogle v. Pennsylvania Electric Company*, 54 Pa. PUC 98 (1980).

In evaluating high billing complaints, 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. *Thomas v. PECO Energy Company*, C-2010-2187197 (Opinion and Order entered November 15, 2011), *citing Charisse Bennett v. Peoples Natural Gas Col*, C-2009-2122979 (Order entered October 13, 2010).

Complainant has the burden of proving that the amount billed for natural gas in January – February 2019 is not correct, and that PGW violated a statute, regulation, or Commission Order. Complainant disputes a \$185 charge on her account for a January – February 2019 invoice dated January 25, 2019 (due February 19, 2019) because the first-floor apartment of this residential building was vacant. Complainant believes she was overcharged, but offered no prior bills for comparison. PGW Exhibit 2.

Complainant testified that no one lived in the unit since November 2018. The number of persons living in the household changed from at least one person to no persons in November 2018. Complainant claims her bills are incorrect and too high given that the first floor of the duplex is vacant. The Company offered the results of a meter test conducted on February 28, 2019 which showed a 99% accuracy as well as testimony into the record; thus, the burden to prove a violation of a statute or Commission regulation is Complainant's burden going forward.

Complainant's usage comparison as shown in PGW Exhibit 2 is as follows:

<b>Time Period</b>	<b>No. of Days</b>	<b>Usage in CCF<sup>2</sup></b>	<b>Heat Usage</b>	<b>No. Degree Days<sup>3</sup></b>	<b>CFDD<sup>4</sup></b>
<b>2/17/17 – 2/21/18</b>	<b>365</b>	<b>437</b>	<b>401</b>	<b>4144</b>	<b>9.7</b>
<b>2/21/18- 2/21/19</b>	<b>365</b>	<b>414</b>	<b>378</b>	<b>4598</b>	<b>8.2</b>

I am persuaded by PGW Exhibit 2 and the testimony of PGW witness Pinkney, to find that the higher bill in January 2019 pertained to a larger cycle of days of 35 instead of the prior month’s bill for 29 days. Additionally, the charge of \$185 is related to colder outdoor temperatures in the winter of 2019, causing the gas heater to work harder.

The evidence shows that consumption decreased in January – February 2019 compared to the same time period in 2018; however, given seasonal temperature drops in January – February 2019, the bill appears to be reasonable. The meter tested on February 28, 2019 was 99% accurate. PGW Exhibit 3. This is within the Pennsylvania Public Utility Code’s guidelines.

I find the amount of \$185 billed for usage in January-February 2019 to be reasonable given the evidence of a meter test performed on February 28, 2019, and the usage comparison. The testing standards of 52 Pa.Code § 59.21(e)(3) and (f)(1) require a tested meter fall within a 98% - 102% accuracy. The fact that the meter tested at 99% is further evidence that Complainant was being billed correctly during the time period in question. PGW Exhibits 1-3 are persuasive to show the billed amount is reasonable. Vacancy in a service unit is but one factor contributing to consumption of energy. Lower outdoor temperatures in January – February 2019 could also have attributed to a bill for \$185. Consequently, Complainant failed to meet her

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<sup>2</sup> “CCF” means hundred cubic feet.

<sup>3</sup> The information on this chart was taken from PGW Exhibit 2. Heating DDD’s states how many degree days were within the billing period. A degree day is defined as a term used to measure the need for heat. To get the degree day of any given day, you take the high and low temperature of the day to get an average and subtract that from a benchmark of 65 degrees, then add all of the days in the month together.

<sup>4</sup> “CFDD” means cubic feet of gas used per degree day.

burden of proving PGW placed incorrect charges on her account or violated any Commission regulation, order, or statute.

### CONCLUSIONS OF LAW

1. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

2. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

3. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Replogle v. Pa. Electric Co.*, 54 Pa. PUC 528 (1980), and *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98 (1980).

4. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

5. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 66 A.2d 96 (Pa. Super. 1961); and *Murphy v. Pa. Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

