

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steven Fred, Sr. c/o V&S Elmwood Lanes, Inc.	:	
	:	
v.	:	C-2021-3026266
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This decision finds that the preponderance of the evidence established that the Complainant, a gas service customer, was not overbilled by Philadelphia Gas Works. The Complaint will be dismissed.

HISTORY OF THE PROCEEDING

On June 7, 2021, Steven Fred, Sr. c/o V&S Elmwood Lanes, Inc., Complainant, filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission” or “PUC”) against Philadelphia Gas Works (“PGW”). In the Complaint, Mr. Steven Fred, the owner of V&S Elmwood Lanes, Inc. ("Elmwood Lanes"), alleged that there are incorrect charges on his bill. He contended that there are no plausible explanations for fluctuations in his gas bill and, as relief, he would like his gas bill adjusted to a more reasonable amount.

On June 28, 2021, PGW filed an Answer to the Complaint. In the Answer, PGW denied all material allegations of fact and specifically denied that there are incorrect charges on the Elmwood Lanes' bills.

On June 30, 2021, an Initial Call-In Telephone Hearing Notice was issued to all parties. The Notice advised the parties that the hearing would be held on August 3, 2021. Also, on June 30, 2021, a Prehearing Order was issued to the parties. The Prehearing Order advised the parties of the hearing procedures and that corporations must be represented by an attorney.

On August 3, 2021, the Complainant requested a continuance and PGW did not object. A Telephonic Hearing Cancellation/Reschedule Notice was issued on August 3, 2021 rescheduling the hearing for September 14, 2021.

By Order issued on September 8, 2021, the Complainant, a corporation, was instructed to have an attorney licensed to practice law in the state of Pennsylvania enter an appearance to represent it no later than September 13, 2021.

The hearing convened as scheduled on September 14, 2021. Neither the Complainant nor a representative was present. However, counsel for PGW, Laureto Farinas, Esquire, stated that he had received a copy of a Notice of Appearance from an attorney, Stacy L. Shields, Esquire, on behalf of the Complainant and that a Ms. Shields had requested a continuance. The hearing was adjourned. Also on September 14, 2021, a Further Call-in Telephonic Hearing Notice was issued, setting the further hearing for October 28, 2021.

The further hearing convened as scheduled on October 28, 2021. Ms. Shields appeared on behalf of the Complainant and Mr. Farinas appeared on behalf of PGW. Mr. Fred testified on behalf of the Complainant. PGW presented Wendy Vaca, Senior Customer Review Officer, as a witness. The following exhibits were admitted into the record during the course of the hearing:

Complainant Exhibit 1	PGW Bill analysis chart
PGW Exhibit 1	April 21, 2021-letter to the Complainant from PGW
PGW Exhibit 2	Meter Test Results
PGW Exhibit 3	Statement of Account
PGW Exhibit 4	BCS Decision

At the close of the hearing, PGW was instructed to provide additional information by November 18, 2021, and the Complainant was given until December 2, 2021, to provide any response.

The transcript was received on November 17, 2021. As directed, PGW submitted additional information on November 18, 2021, PGW Exhibits 5-7. The Complainant did not object to PGW Exhibits 5-7. Accordingly, PGW Exhibits 5-7 will be admitted into the record herein. The record closed on December 2, 2021, the day a response was due from the Complainant.

FINDINGS OF FACT

1. The Complainant is Steven Fred, Sr. c/o V&S Elmwood Lanes, Inc.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Steven Fred is the owner of Elmwood Lanes. (Tr. 14).
4. Elmwood Lanes has received gas service from PGW for over eleven years. (Tr. 14-15).
5. Beginning in approximately March or April 2020, near the beginning of the COVID-19 pandemic, Mr. Fred noticed that the heating, ventilation, and air conditioning (“HVAC”) system at Elmwood Lanes was old and no longer worked well. (Tr. 16-17).

6. Elmwood Lanes was closed from March 15, 2020 until January 2021. (Tr. 32).

7. In November 2020, a new HVAC system was installed at Elmwood Lanes. (Tr. 15).

8. PGW personnel discovered leaks in the inlet pipes and service extension piping leading to the meter when visiting the service address on August 4, 2021. (PGW Exhibit 5; Tr. 23).

9. Any leaks discovered on the inlet side of the meter would not result in higher usage measurements. (PGW Exhibit 5).

10. PGW conducted a test of the Complainant's meter on August 16, 2021. (PGW Exhibit 2; Tr. 52-53).

11. The meter tested .5% fast. (Tr. 53)

12. The meter test results were within the 2% or less acceptable accuracy range for meters. (Tr. 51-52).

13. The higher the degree days, the increased need for heating or a rise in consumption. (Tr. 55; PGW Exhibit 3).

14. The degree days in 2021 were higher than they were in 2020. (Tr. 55-57; PGW Exhibit 3).

DISCUSSION

As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To satisfy this burden, the

Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Public Utility Code or a regulation or Order of the Commission. To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent public utility violated either its duty under the Public Utility Code or the orders or regulations of the Commission, 66 Pa.C.S. § 701, or that the utility is responsible or accountable for the problem described in the Complaint. *Griggs v Phila. Gas Works*, Docket Number F-2020-3021754 (Opinion and Order entered July 15, 2021) (citing *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990)); *Feinstein v. Phila. 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 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); 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 & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 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).

The Complainant questions why his PGW bills for December 2020 through March 2021 were higher than the same period in previous years. When overbilling is alleged, the Commission references *Waldron v. Phila. Elec. Co.*, 54 Pa. PUC 98 (1980) (*Waldron*). The *Waldron* rule provides that while accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. *Id.* To establish a *prima facie* case of overbilling, a complainant may show other factors such as: (1) the number of occupants in the household has not changed; (2) the potential for energy utilization was low; and (3) the complainant's billing history shows no prior abnormalities. Once the complainant establishes a *prima facie* case, the burden of proof then shifts to the utility; however, the ultimate burden of proof always remains with the complainant. *Waldron; Replogle v. Pa. Elec Co.*, 54 Pa. PUC 528 (1980). *See also Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Final Order entered Nov. 15, 2011).

The Commonwealth Court of Pennsylvania further refined *Waldron* in *Milkie* at 1219-20, holding:

[w]hile the [Waldron] rule is often explained by stating that the ratepayer must establish certain specific elements in order to make out a *prima facie* case of overbilling by a utility company, we believe that this view is too restrictive. Rather the controlling principle is that even where a utility can present evidence that it has tested the customer's meter and found it to be accurate, the customer may nonetheless prove his case by circumstantial evidence, which would support a finding that the metered usage exceeded the actual usage. Thus, as our Supreme Court has explained, the rule operates as a device by which the complainant is protected from dismissal because of his inability to marshal direct proof that his meter had malfunctioned. *Burleson v. Pennsylvania Pub. Util. Comm'n*, 501 Pa. 433, 435-6, 461 A.2d 1234, 1235 (1983).

The Complainant presented "other factors" as discussed in *Waldron*. Mr. Fred testified that after he installed a new HVAC system at Elmwood Lanes, his PGW bills increased significantly. (Tr. 16). Based on his estimates, his bill increased about 33.5 % across three or four months, December 2020 - March 2021. (Tr. 18-19; Complainant Exhibit 1). He further

testified that the new system had various features designed to decrease his energy usage, which should not result in higher gas bills. (Tr. 16, 17).

PGW asserts that the bills issued to the Complainant are correct as rendered based on actual reads of the meter captured by an AMR system. (Tr. 55, 63). PGW also presented the results of a meter test on August 4, 2021, that showed that the meter was within the +/- 2% margin of error allowed by the Commission's Regulation at 52 Pa. Code § 59.22. (PGW Exhibit 2, Tr. 52-53, 72).

Although under *Waldron* the meter test can be overcome by additional other evidence showing that there was overbilling, the evidence does not support such a finding here. The meter did test within the allowable accuracy range. PGW testimony also established that figures in the Complainant's calculations (Complainant Exhibit 1) were different from the figures in bills issued, bringing into question the Complainant's calculations. (Tr. 54-55).

There was testimony during the hearing that leaks in the pipes were discovered during a visit by PGW personnel and that the leaks were repaired by PGW. (Tr. 29-31, 37-38.) The leaks were on the inlet side of the piping. (PGW Exhibit 5). Gas would escape prior to reaching the meter and therefore the leaks would not result in higher usage measurements and higher bills.

A review of the degree days and usage supports a finding that the Complainant was not overbilled for usage from January through March 2021. The higher the degree days, the increased need for heating or a rise in consumption. (Tr. 55; PGW Exhibit 3). The chart below shows that degree days in 2021 were higher than in 2020 and therefore increased usage and higher bills are not unexpected.

Month	Degree days	Bill dollar amount	Usage CCF
January 2019	783	888.97	697
January 2020	832	1009.74	800
January 2021	891	1645	1,292
February 2019	972	1305	1043
February 2020	803	1077.16	786
February 2021	866	1788	1361
March 2019	808	1076.91	845
March 2020	756	859.93	633
March 2021	893	1792	1424

Figure 1. While the degree days are higher and the bill lower in February 2019 as compared to February 2021, the CCF usage was higher in February 2021 than February 2019, which resulted in a higher bill.

Additionally, as Mr. Fred testified, Elmwood Lanes was closed or had reduced patronage for much of 2020. (Tr. 32). It is logical that the use of gas for heating would increase in 2021 once Elmwood Lanes began to resume normal hours. *See* Figure 1. Substantial evidence does not support a finding that the Complainant was overbilled.

CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission.
66 Pa.C.S. § 332(a).

3. A Commission decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion; a “trace of evidence or a suspicion of the existence of a fact” is insufficient. *HIKO Energy, LLC v. Pa. Pub. Util. Comm'n*, 163 A.3d 1079, 1094 (Pa. Cmwlth. 2017) (quoting *Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016)), *aff'd*, 209 A.3d 246 (Pa. 2019).

4. Commission regulations provide that a meter is sufficiently accurate if it operates within a 2% margin of error. 52 Pa. Code § 59.22.

5. While the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion; Other factors may be considered. *Waldron v. Phila. Elec. Co.*, 54 Pa. PUC 98 (1980); *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Final Order entered Nov. 15, 2011).

6. A preponderance of the evidence presented did not demonstrate that the metered usage exceeded the actual usage or that the Complainant was overbilled by PGW. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Waldron v. Phila. Elec. Co.*, 54 Pa. PUC 98 (1980); *Burleson v. Pennsylvania Pub. Util. Comm'n*, 501 Pa. 433, 435-6, 461 A.2d 1234, 1235 (1983); 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW Exhibits 5-7 are admitted into the record of this proceeding.

2. That the Complaint in the matter of Steven Fred, Sr. c/o Elmwood Lanes v. Philadelphia Gas Works at Docket No. C-2021-3026266 is denied and dismissed.

3. That the Secretary shall mark this docket closed.

Date: February 23, 2022

_____/s/
Darlene Heep
Administrative Law Judge