

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Denise Falcone	:	
	:	C-2022-3032124
v.	:	
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s Complaint because she failed to meet her burden of proving that PGW provided her with inadequate or unreasonable service.

**HISTORY OF THE PROCEEDING**

On April 26, 2022, Denise Falcone (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box indicating “I am having a reliability, safety or quality problem with my utility service.” Under the “requested relief” section of the Complaint, the Complainant indicated that she requested PGW visit her home three times due to heater issues and a loud hissing noise and they would not come to her home because she could not smell gas. The Complainant further indicated that the “Heater Hotline” visited her home approximately two days later and discovered that the sound was her emergency shut off valve, and that her heater was about to explode. As relief, the Complainant is

seeking a change in the process from PGW in response to matters of personal safety coming from equipment.

On May 16, 2022, the Respondent filed an Answer denying that there is a reliability, safety, or quality problem with the services at 726 N. 64<sup>th</sup> Street, Philadelphia, PA (service address).

By Initial Telephonic Hearing Notice dated May 18, 2022, an initial call-in telephonic hearing was scheduled for June 29, 2022 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on May 23, 2022. The Prehearing Order directed the parties to comply with various procedural requirements and also 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 hearing convened as scheduled on June 29, 2022. The Complainant appeared *pro se* and testified. The Respondent also appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Glace, a Senior PGW Customer Review Officer, and Keaton Barrett, a PGW Gas Service Technician. The Respondent submitted two exhibits, both of which were admitted into the record (PGW Exhs. 1 & 2).

The record consists of a 57-page transcript and two exhibits. The record closed on July 22, 2022 when the transcript was filed with the Commission.

#### FINDINGS OF FACT

1. The Complainant in this case is Denise Falcone.
2. The Respondent in this proceeding is Philadelphia Gas Works.

3. The Complainant resides at 726 N. 64<sup>th</sup> Street, Philadelphia, PA. Tr. 9.
4. The Complainant's Complaint concerns a gas house heater. Tr. 12.
5. As of the date of the hearing, the Complainant's gas house heater had not been serviced in approximately twenty years. Tr. 22.
6. PGW routinely replaces gas meters when they age out. Tr. 35.
7. Following several attempts to contact the Complainant, a PGW representative spoke with her and scheduled a meter exchange at the service address for July 24, 2021. Tr. 35-36; PGW Exh. 1.
8. On July 24, 2021, a PGW technician visited the service address to perform the meter exchange. Tr. 12; PGW Exh. 1.
9. The PGW technician shut off the Complainant's gas prior to exchanging the meter. Tr. 46.
10. After the PGW technician replaced the meter, he turned the Complainant's gas back on. Tr. 46.
11. After turning the Complainant's gas back on, the PGW technician checked the Complainant's gas appliances to make sure they were working properly. Tr. 46.
12. The PGW technician determined that the Complainant's gas house heater was not lighting, needed to be serviced, and shut the heater off at the valve. Tr. 47, 49; PGW Exh. 1.
13. The PGW technician provided a hazard tag to the Complainant with a written explanation indicating: "house heater not lighting and needs service – shut off at valve – refer to contractor." Tr. 48; PGW Exh. 2.

14. The Complainant signed the hazard tag acknowledging receipt of the hazard tag from the PGW technician. Tr. 25, 27, 48; PGW Exh. 2.
15. The PGW technician left a copy of the hazard tag with the Complainant. Tr. 51.
16. When the PGW technician left the service address, gas was not flowing to the house heater. Tr. 49-50.
17. PGW's emergency gas leak line's sole purpose is for people to report gas leaks. Tr. 38.
18. PGW's emergency gas leak line will send a technician to a property only if there is a gas odor detected. Tr. 42.
19. On July 27, 2021, the Complainant called PGW's emergency gas leak line to report an issue with her house heater. Tr. 15, 37; PGW Exh. 1.
20. The Complainant reported that the heater made a loud noise, sounded as if it was leaking on the inside but that there was not any water on the ground. Tr. 16-17, 37; PGW Exh. 1.<sup>1</sup>
21. The Complainant reported that she did not smell gas. Tr. 17, 37; PGW Exh. 1.
22. The Complainant did not smell gas in her house at any time. Tr. 30.
23. The PGW gas leak line representative informed the Complainant that they would not come inspect her heater, but if she begins to smell gas she could report that to PGW. Tr. 17, 37; PGW Exh. 1.

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<sup>1</sup> I will note that PGW Exh. 1 indicates that the Complainant's call was about her water heater. However, the Complainant clarified at the hearing that she was concerned about her gas house heater. Tr. 12.

24. PGW's Parts and Labor plan is a protection plan for gas appliances at a property. Tr. 38.

25. If a PGW customer does not have a Parts and Labor plan with PGW, they have to hire private contractors to repair their gas appliances. Tr. 39.

26. The Complainant does not have a parts and labor contract with PGW. Tr. 21-22, 37; PGW Exh. 1.

27. The Complainant subsequently spoke with a PGW supervisor who informed her that since she was not enrolled in PGW's parts and labor program she would have to contact an independent contractor for assistance. Tr. 40; PGW Exh. 1.

28. The Complainant subsequently contacted the Heater Hotline to address her house heater concerns. Tr. 18.

29. In approximately October/November 2021, the Heater Hotline had the Complainant's heater replaced. Tr. 20-21, 24.

### DISCUSSION

In the present case, the Complainant alleged that PGW should have come to her home to investigate and address a problem she was experiencing with her house heater. The Complainant has raised a claim of inadequate or unreasonable service.

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, Complainant must show that the Respondent public utility 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. 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). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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 Transp. 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 & 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).

PGW is required by law to provide the Complainant with adequate and reasonable service. Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, provides, in relevant part:

**§1501. Character of service and facilities**

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. Pennsylvania Public Utility Commission*, 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.

478 A.2d at 949 (footnote omitted).

The statutory definition of "service" is to be broadly construed.<sup>2</sup> *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.

In the present case, the record demonstrates that when a PGW technician was performing a meter exchange at the service address, he discovered her house heater was not working properly and needed service. Tr. 47, 49; PGW Exh. 1. As a result, he shut the heater off and provided the Complainant with a hazard tag with a written explanation indicating: "house heater not lighting and needs service – shut off at valve – refer to contractor." Tr. 47-48; PGW Exh. 2. The Complainant signed the hazard tag acknowledging receipt from the PGW technician. Tr. 25, 27, 48; PGW Exh. 2.

The record further demonstrates that three days after the PGW technician shut off the Complainant's heater at the valve, the Complainant called PGW's emergency gas leak line to

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<sup>2</sup> "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.

report an issue with her house heater. Tr. 15, 37; PGW Exh. 1. The Complainant reported that the heater made a loud noise, sounded as if it was leaking on the inside but that there was not any water on the ground. Tr. 16-17, 37; PGW Exh. 1. The Complainant further reported that she did not smell gas. Tr. 17, 37; PGW Exh. 1. The Complainant does not have a parts and labor contract with PGW. Tr. 21-22, 37; PGW Exh. 1. Since the Complainant did not smell gas, PGW advised that they would not come inspect her heater, but if she begins to smell gas she could call and report that to PGW. Tr. 17, 37; PGW Exh. 1. The Complainant subsequently spoke with a PGW supervisor who informed her that since she was not enrolled in PGW's parts and labor program she would have to contact an independent contractor for assistance. Tr. 40; PGW Exh. 1.

PGW identified a hazardous situation with the Complainant's house heater, shut it off at the valve and informed the Complainant of the situation. Since the Complainant did not smell gas when she reported her concerns about her heater to PGW, and because the Complainant does not have a parts and labor contract with PGW, PGW was under no obligation to come to the service address to investigate her concerns. PGW had already sufficiently addressed any potential hazard by shutting off gas to her heater. Anything that happened after PGW shut the gas to the heater off was beyond PGW's control. Under these circumstances, I cannot conclude that PGW provided the Complainant with inadequate or unreasonable service.

Accordingly, the Complainant's Complaint is 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.A. § 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 Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa.C.S. § 1501.

5. The Complainant failed to meet her burden of proving that PGW provided her with unreasonable or inadequate service.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Denise Falcone against Philadelphia Gas Works at Docket No. C-2022-3032124 is denied; and

2. That the docket at Docket No. C-2022-3032124 be marked closed.

Date: October 18, 2022

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