

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Janet Spivak	:	
	:	
v.	:	F-2022-3032571
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint filed by Complainant against Philadelphia Gas Works. Complainant failed to satisfy her burden of demonstrating that Philadelphia Gas Works violated the Public Utility Code, a Commission regulation or Commission order with respect to billing for natural gas service to her home.

HISTORY OF THE PROCEEDING

On May 11, 2022, Janet Spivak (“Ms. Spivak” or “Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against Philadelphia Gas Works Company (“PGW” or “Respondent”).¹ In her complaint, Ms. Spivak alleged that she was being incorrectly charged for gas service. She averred that PGW was erroneously billing her for gas not consumed by her due to a gas leak outside her home. Ms.

¹ The Complainant sought timely review of the dismissal of her informal complaint filed with the Commission’s Bureaus of Consumer Services at BCS Case No. 3823667.

Spivak requested that Respondent adjust her bill to reflect charges for gas delivered inside her home.

On June 13, 2022, Respondent filed a timely answer. In its answer, Respondent denied that there is a reliability or quality problem with the service provided to Complainant. PGW averred that there were no incorrect charges on the bill for natural gas service to Complainant's home. Lastly, Respondent requested that Complainant be denied relief and her complaint be dismissed in its entirety.

On June 16, 2022, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for July 26, 2022, at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I served a prehearing order on June 23, 2022, setting forth hearing information and the rules that would govern the proceeding.

The hearing was held as scheduled on July 26, 2022, at 10:00 a.m. Complainant appeared on behalf of herself. Graciela Christlieb, Esquire attended on behalf of Respondent, along with two witnesses for Respondent. Respondent submitted three exhibits that were admitted into the record. Complainant did not submit any exhibits. The record in this case closed on August 29, 2022, upon the filing of the 67-page hearing transcript and the Respondent's exhibits with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Janet Spivak.
2. The Respondent in this case is Philadelphia Gas Works.
3. Complainant's service address is 2680 Veronica Lane, Philadelphia, PA 19116.

4. On February 6, 2022, Complainant contacted PGW and reported that her heat was not working and that she smelled gas at her home. Tr. 20 – 21.

5. In response to Complainant’s February 6, 2022 report of a possible gas leak, PGW dispatched a representative to the service location. Tr. 34 – 35, 47.

6. The representative who responded to Ms. Spivak’s report did not find a gas leak at Ms. Spivak’s home on February 6, 2022. Tr. 33 – 34, 47.

7. The representative who responded to Ms. Spivak’s report found that a regulator had “tripped” and would not reset. He replaced the regulator and gas service was restored to Ms. Spivak’s home on February 6, 2022. Tr. 34 – 35, 47; Exhibit 2.

8. Ms. Spivak believed that she was being billed for gas that she did not consume due to a gas leak outside her house. Tr. 35.

9. A gas meter is installed at the service address. Tr.36; Exhibit 1.

10. The gas meter only measures gas after it flows into the home; it does not measure gas flow outside the home. Tr. 35 – 37.

11. Bills issued by PGW to Ms. Spivak for gas usage are based on actual meter readings. Tr. 37.

DISCUSSION

Legal Standard

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem

described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). “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*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Complainant has alleged that Respondent violated section 1501 of Title 66 of the Public Utility Code regarding reasonable, safe, and quality service. 66 Pa.C.S. § 1501. Therefore, Complainant has the burden of proof in this proceeding.

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 with the complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth 2001) (*Milkie*); *see also, Burlison v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth 1982).

Moreover, the Commission’s decision must be supported by “substantial evidence,” which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm’n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super 1960). A complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Utility companies are required by law to provide adequate and reasonable service. Section 1501 of the Public Utility Code states:

§ 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.

66 Pa.C.S. § 1501. This section does not require utility companies to provide perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987).

Failure to Meet Burden

Complainant testified that in February 2022, she contacted PGW because her gas service was not working. In her testimony, she acknowledged that she reported the issue as a gas leak to ensure a prompt response by PGW. Tr. 20 – 21, 25. Ms. Spivak was informed that the problem was outside her home. Tr. 27. She believed that she was being charged for gas service that she did not consume. Tr. 17 – 18, 22. She requested that the Commission adjust her bill so that she would only be charged for gas she consumed. Tr. 22, 28

Respondent presented two witnesses, Jessica Glace, a Senior Customer Review Officer and Joseph Wooding, Service Technician A. Tr. 29, 45. Ms. Glace testified that she investigated Ms. Spivak’s contact with PGW, including the report of a gas leak on February 6, 2022. She testified that PGW had no record of a gas leak at Ms. Spivak’s home in February 2022. Tr. 35. She also testified that a “street leak” outside Ms. Spivak’s home would not impact Ms. Spivak’s bill because she is charged only for gas that comes into the home and passes through the gas meter. Tr. 35 – 37. Ms. Glace also explained that bills for gas service reflect gas usage, which fluctuates based on the amount of gas needed to maintain the customer’s chosen indoor temperature despite fluctuating outdoor temperature. Tr. 43 – 44.

Mr. Wooding testified that he responded to Ms. Spivak's report of a gas leak on February 6, 2022. Tr. 47. He testified that he found no gas leak and that he was able to replace the gas regulator that had tripped, and that service was restored to Ms. Spivak's home the same day. Tr. 47 – 48. Exhibit 2.

The actions of Respondent in this case demonstrate reasonable service under Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501.

It is Complainant's burden to establish that Respondent violated the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701. It is only after a complainant establishes a *prima facie* case that the burden shifts to the utility to rebut the evidence presented. *Milkie*. Complainant did not establish a *prima facie* case.

It appears that Ms. Spivak based her complaint on the belief that she was being charged for gas that she did not consume. However, she acknowledged that she did not smell gas inside her home on February 6, 2022, and that she only reported a gas leak to obtain a prompt response from PGW. Tr. 25 – 26. She also acknowledged that PGW informed her that there was a problem with the regulator. Tr. 26 - 27. While Ms. Spivak may have believed that she was being charged for gas that she did not consume, she presented no evidence supporting that argument. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n.*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). There is no objective evidence in the record upon which to find that Respondent improperly billed Complainant for gas service to the service location or otherwise failed to provide reasonable service to Complainant.

It is noted that Complainant did not provide testimony from a plumber or other qualified service technician or any documentary evidence that would demonstrate that she was being billed for gas not consumed by her. It was Complainant's burden to prove that PGW billed her for gas service that was not delivered to or consumed by her. The testimony of Respondent's

witnesses and the evidence do not prove that PGW billed Ms. Spivak for gas service that was not delivered to or consumed by her. To the contrary, the consistent and credible testimony of Ms. Glace and Mr. Wooding refute Ms. Spivak's argument.

There is no evidence in the record that proves that Respondent billed Complainant for gas service she did not consume. The evidence of record shows that Respondent's actions in this case were reasonable and consistent with all applicable laws, regulations, and orders.

In the absence of evidence in the record that supports Complainant's claims, I must find that Complainant failed to establish her burden that Respondent violated any laws in connection with billing for gas service. Complainant also did not establish that Respondent billed Complainant for gas service she did not consume. There is no evidence in the record to prove that Respondent provided unreasonable service to Complainant. 66 Pa.C.S. § 1501.

Accordingly, for the reasons stated above, Complainant's Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter within its regulations and the parties to this proceeding. 66 Pa.C.S. § 701.
2. 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).
3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).
4. "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*, 70 A.2d 854 (Pa. 1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. 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 with the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

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

8. "Substantial evidence" is the amount of 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 & W. Ry. Co. 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. 1961); and *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

9. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

10. Utility companies are required to provide reasonable service. 66 Pa.C.S. § 1501.

11. Respondent provided reasonable service consistent with Section 1501 of Title 66 of the Public Utility Code. 66 Pa.C.S. § 1501.

12. Complainant has failed to satisfy her burden to demonstrate that Respondent has violated the Public Utility Code, a Commission regulation or Commission order. 66 Pa.C.S. §§ 332(a), 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Janet Spivak at Janet Spivak v. Philadelphia Gas Works, docket number F-2022-3032571 is hereby denied.
2. That this matter is marked closed.

Date: October 19, 2022

_____/s/
Arlene Ashton
Administrative Law Judge