

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vanessa Wright	:	
	:	
v.	:	C-2022-3031694
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Formal Complaint as the Complainant failed to meet her burden of proof to establish that there were incorrect charges on her bills as the Respondent charged her in accordance with its Commission-approved tariff.

HISTORY OF THE PROCEEDING

On March 18, 2022, Vanessa Wright (Complainant or Ms. Wright) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant alleges that there are incorrect charges on her bills and that the distribution charges are excessive. The Complainant requests that the distribution charges reflect no more than two-thirds of her usage as billable charges.

On April 20, 2022¹, Respondent filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated April 22, 2022, an initial hearing was scheduled for May 24, 2022, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on May 17, 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 May 24, 2022. Complainant did not call in for the hearing and Respondent appeared represented by counsel. However, Ms. Wright contacted my office later that day to indicate that she had been in a car accident that morning and missed the hearing. Respondent had no objection to rescheduling the hearing, so the matter was rescheduled by Notice dated June 24, 2022 for July 28, 2022.

The hearing convened as scheduled on July 28, 2022. Complainant participated *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Glace, Senior Customer Review Officer. Respondent offered four exhibits which were all admitted into evidence.

The hearing resulted in a 35-page transcript.² The record closed August 10, 2022, when I received the transcript of the hearing.

¹ The Secretary's Bureau served the Complaint on the Respondent on March 31, 2022.

² The hearing on May 24, 2022 resulted in a short transcript of six pages. Citations in this decision refer to the second hearing on July 28, 2022 (Tr2.).

FINDINGS OF FACT

1. The Complainant in this case is Vanessa Wright who resides at 114 West Gorgas Lane, Philadelphia, Pennsylvania 19119 (Service Address). Tr2. at 13.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant receives residential gas service from the Respondent at the Service Address. Tr2. at 13.
4. The Complainant resides at the Service Address alone. Tr2. at 17.
5. The Complainant owns the Service Address. Tr2. at 17.
6. The Service Address is a single-family home and has five bedrooms, two and a half bathrooms, a living room, dining room and kitchen. Tr2. at 17.
7. The Respondent bills pursuant to its Commission approved tariff at Supplement No. 148 to Gas Service Tariff—Pa. P.U.C. No. 2. Tr2. at 24; PGW Ex. 3.
8. Under the tariff, PGW charges a Customer Charge of \$14.90 per month for residential customers. PGW Ex. 3.
9. The Distribution Charge in the tariff includes a Delivery Charge of \$0.72955 per Ccf for residential customers. Tr2. at 25; PGW Ex. 3.
10. The Distribution Charge also includes Universal Service and Energy Conservation Surcharge, Restructuring and Consumer Education Surcharge, Efficiency Cost Recovery Surcharge, Other Post Employment Benefit Surcharge, and Distribution System Improvement Charge. Tr2. at 24; PGW Ex. 3.

11. The Universal Service and Energy Conservation Surcharge is \$0.16331/Ccf. Tr2. at 25; PGW Ex. 3.
12. The Restructuring and Consumer Education Surcharge is \$0.00000/Ccf. Tr2. at 25; PGW Ex. 3.
13. The Efficiency Cost Recovery Surcharge is \$0.00186 per Ccf for Residential customers. Tr2. at 26; PGW Ex. 3.
14. The Other Post Employment Benefit Rider Surcharge is \$0.03371/Ccf. Tr2. at 26; PGW Ex. 3.
15. The Distribution System Improvement Charges is 7.5% of the Customer Charge and Distribution Charge combined. PGW Ex. 4.
16. The total balance on the Complainant's account is \$1,895.17. Tr2. at 22; PGW Ex. 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, Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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). A preponderance of evidence is established 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 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 & W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. 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 her 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).

Charges on the Bills

The Complainant argues that there are incorrect charges on her bills. Specifically, she indicates that the distribution charges on her bills are too high, and she requests that these charges be limited to no more than two-thirds of her usage as billable charges. PGW contends that the Complainant is being billed in accordance with its Commission-approved tariff.

The Complainant's only testimony in this matter is her belief that the distribution charges are too high. Regardless of how earnestly Complainant believes the Complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to permit her to sustain her burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006) (citing, *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A. 2d 12 (Pa. 1987)).

It is well established that a public utility's Commission-approved tariff carries a presumption that it is reasonable. *Bollinger v. T. W. Phillips Gas and Oil Co.*, Docket No. C-2011-2225850 (Final Order entered May 1, 2012). *See also Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Opinion and Order entered July 28, 2012) (citing *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996)).

PGW presented the testimony of Ms. Glace who indicated that the Respondent charges certain charges under its Commission approved tariff at Supplement No. 148 to Gas Service Tariff—Pa. P.U.C. No. 2. Tr2. at 24; PGW Ex. 3. Under the tariff, PGW charges a Customer Charge of \$14.90 per month for residential customers. PGW Ex. 3. The Distribution Charge in the tariff includes a Delivery Charge of \$0.72955 per Ccf for residential customers. Tr2. at 25; PGW Ex. 3. The Distribution Charge also includes Universal Service and Energy Conservation Surcharge, Restructuring and Consumer Education Surcharge, Efficiency Cost Recovery Surcharge, Other Post Employment Benefit Surcharge, and Distribution System Improvement Charge. Tr2. at 24; PGW Ex. 3. The Universal Service and Energy Conservation Surcharge is \$0.16331/Ccf. Tr2. at 25; PGW Ex. 3. The Restructuring and Consumer Education Surcharge is \$0.00000/Ccf. Tr2. at 25; PGW Ex. 3. The Efficiency Cost Recovery Surcharge is \$0.00186 per Ccf for Residential customers. Tr2. at 26; PGW Ex. 3. The Other Post Employment Benefit Rider Surcharge is \$0.03371/Ccf. Tr2. at 26; PGW Ex. 3. The Distribution System Improvement Charges is 7.5% of the Customer Charge and Distribution Charge combined. PGW Ex. 4.

The record reflects that PGW billed the Complainant for gas service in accordance with its Commission-approved tariff. The Complainant did not dispute that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. Instead, she merely argued that, in her opinion, the charges were too high and should be limited. The Complainant has not

presented substantial evidence to rebut the presumption that PGW's tariff provision are reasonable. Therefore, the Complaint must be denied and 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. 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. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit a Complainant to sustain their burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006) (citing, *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)).

5. A public utility's Commission-approved tariff carries a presumption that it is reasonable. *Bollinger v. T. W. Phillips Gas and Oil Co.*, Docket No. C-2011-2225850 (Final Order entered May 1, 2012). *See also Zucker v. Pa. Pub. Util. Comm'n*, 401 A.2d 1377 (Pa. Cmwlth. 1979).

6. A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Opinion and Order entered

