

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                        |   |                |
|------------------------|---|----------------|
| Mary Jane Nolan        | : |                |
|                        | : |                |
| v.                     | : | C-2022-3036549 |
|                        | : |                |
| Philadelphia Gas Works | : |                |

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complaint of Mary Jane Nolan because she failed to meet her burden of proving that PGW billed her improperly for service or provided her with inadequate or unreasonable service.

**HISTORY OF THE PROCEEDING**

On November 3, 2022, Mary Jane Nolan (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 marked “[o]ther.” The Complainant indicated in her Complaint that her bill was high even though the service address was unoccupied without any appliances. The Complainant further indicated that she complained to PGW on several occasions to advise that the service address was vacant, and without any appliances. The Complainant averred that when she requested that PGW inspect the service address, PGW discovered a gas leak. The Complainant believes that PGW

should have inspected the property when she informed them her bills were high even though the home was vacant. As relief, the Complainant requested that a portion of her bill be forgiven.

On November 25, 2022, the Respondent filed an Answer denying that it failed to perform a safety check at 2973 Tilton Street, Philadelphia, PA (service address). PGW further responded: that on April 20, 2022, the Complainant contacted PGW to dispute her balance; that PGW informed the Complainant at that time that it could take up to 30 days to address her disputes; that on May 11, 2022, a PGW technician visited the service address and determined that there were leaks on the house heater union; that the technician made a temporary repair and issued a hazard tag; and that on May 20, 2022, PGW issued a letter to the Complainant advising that her bills were correct as rendered. Additionally, PGW responded: that on September 9, 2022, the Complainant contacted PGW stating that her service was shut off but she was still receiving bills; that PGW informed the Complainant at that time that it had no record of her requesting that the gas service to the service address be terminated; that at the Complainant's request, a physical shut off was scheduled for September 11, 2022; and that PGW terminated gas service to the service address on September 11, 2022. PGW maintains that it has no record of the Complainant requesting termination of service. PGW requested that the Complaint be dismissed.

By Initial Telephonic Hearing Notice dated December 5, 2022, an initial call-in telephonic hearing was scheduled for February 1, 2023, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 5, 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 January 20, 2023. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Glace, a PGW Senior Customer

Review Officer. The Respondent submitted sixteen exhibits, all of which were admitted into the record (PGW Exhs. 1-16).

The record closed on February 21, 2023, the date the transcript was filed with the Commission.

### FINDINGS OF FACT

1. The Complainant in this case is Mary Jane Nolan.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant resides at 927 South 12<sup>th</sup> Street, Apartment 2R, Philadelphia, PA. Tr. 10, 12.
4. The Complainant's Complaint concerns gas service provided to 2973 Tilton Street, Philadelphia, PA (service address). Tr. 10.
5. On October 13, 2020, the Complainant purchased the service address. Tr. 14.
6. The Complainant does not visit the service address. Tr. 22.
7. On February 23, 2021, the Complainant requested gas service in her name at the service address. Tr. 14, 36; PGW Exh. 1.
8. On February 23, 2021, PGW turned the gas on at the service address in the Complainant's name and sent her an email confirming the initiation of service. Tr. 36-37; PGW Exh. 2.
9. PGW does not review this email inbox for incoming emails. Tr. 38.

10. The only gas appliance located at the service address is a house heater. Tr. 15-16.

11. The service address has been vacant since the Complainant purchased the property. Tr. 14.

12. On April 20, 2022, the Complainant contacted PGW to dispute her bill for service at the service address, telling the Representative that the house was vacant and that everything was off. Tr. 42; PGW Exh. 4.

13. The Representative informed the Complainant that it appeared that her house heater was on. Tr. 42; PGW Exh. 4.

14. The Complainant did not request termination of her gas service at that time. Tr. 43.

15. On May 9, 2022, the Complainant emailed a response to the February 23, 2021, confirmation email to dispute her bill. Tr. 43; PGW Exh. 5.

16. Also on May 9, 2022, the Complainant called PGW to dispute a bill and to schedule a safety check. Tr. 16-18, 44; PGW Exh. 6.<sup>1</sup>

17. On May 11, 2022, a PGW technician visited the service address. Tr. 18-19, 45, 47; PGW Exh. 8.

18. The Complainant's sister let the PGW Technician into the service address. Tr. 19.

---

<sup>1</sup> The Complainant initially testified that she called PGW to dispute her bill and request a safety check on April 20, 2022. She subsequently testified that she contacted PGW on May 9, 2022. Tr. 16-18.

19. The Complainant was not present during this site visit but was on the phone with her sister during the visit. Tr. 19.
20. The PGW technician found the gas on at the service address. Tr. 47; PGW Exh. 8.
21. The PGW technician found an operational heater at the service address. Tr. 47-48; PGW Exh. 8.
22. The PGW technician smelled gas while at the property and discovered two gas leaks. Tr. 19, 48; PGW Exh. 8.
23. The PGW technician made a temporary repair on the Complainant's fuel line and left a hazard tag. Tr. 19, 48; PGW Exh. 8.
24. The hazard tag advised the Complainant that the temporary repair on the fuel line must be corrected as soon as possible to comply with state operating practices. Tr. 48-49; PGW Exh. 8.
25. The PGW technician left the gas on at the service address. Tr. 21, 47; PGW Exh. 8.
26. After the PGW technician fixed the gas leaks, no further gas consumption registered on the meter for the service address. Tr. 41; PGW Exh. 3.
27. On May 20, 2022, PGW issued the Complainant a letter advising that her bills are correct as rendered, that if gas appliances were not completely shut off at the unit consumption will record on the meter, and that PGW suggested she discontinue service if she is not using her gas appliances. Tr. 50-51; PGW Ex. 9.

28. In order to request termination of service, a PGW customer must contact PGW and speak with a customer service representative so that an appointment may be scheduled. Tr. 60.

29. On September 9, 2022,<sup>2</sup> the Complainant contacted PGW to request termination of gas service to the service address. Tr. 25, 53; PGW Exh. 11.

30. On September 11, 2022, a PGW technician shut the gas off to the service address. Tr. 53-54; PGW Exh. 11.

31. PGW does not have any record of the Complainant requesting termination of service prior to September 9, 2022. Tr. 55-56; PGW Exh. 13.

32. As of September 30, 2022, the Complainant's balance totaled \$1,040.29. PGW Exh. 15.

### 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 public utility 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 the evidence is evidence more convincing, by even the smallest amount, than

---

<sup>2</sup> The Complainant initially testified that she contacted PGW on September 26, 2022 to request termination of service, and subsequently testified that she contacted PGW on September 11, 2022. However, PGW records demonstrate that she actually contacted PGW on September 9, 2022.

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 and 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 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).

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).

### High Bill Dispute

The Complainant alleged that her bills for gas service at the service address were high despite the property being vacant since she purchased it.

The burden of proof for "high bill" complaints has been explained in *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission's (PSC's) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole

criterion. The Commission stated that it will also consider the following factors: the billing history of the Complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

Consistent with the Commission's holding in *Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered Oct. 13, 2010), the *Waldron* Rule allows a Complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high. In evaluating a “high bill” complaint, 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.” *Id.* at 6 (emphasis added); *See Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011) (holding that limiting the *Waldron* Rule to the three factors is too limiting).

The record in this matter reflects that on February 23, 2021, the Complainant requested gas service in her name at the service address, and that the service was turned on that same day. Tr. 14, 36; PGW Exh. 1. The record further reflects that, although the service address has been vacant since the Complainant purchased the service address, the service address is equipped with a gas house heater. Tr. 14-16, 47-48. When the Complainant called and spoke with a PGW representative about her bill on April 20, 2022, a PGW Representative advised her that it appeared her house heater was on. Tr. 42; PGW Exh. 4. The Complainant did not request termination of her service at that time. Tr. 43.

The Complainant contacted PGW again on May 9, 2022, to again dispute her bill for service and to schedule a safety check. Tr. 16-18, 44; PGW Exh. 6. On May 11, 2022, a PGW technician visited the service address and found the gas on. Tr. 18-19; 45, 47; PGW Exh. 8. The PGW technician found an operational heater at the service address. Tr. 47-48; PGW

Exh. 8. The PGW technician smelled gas while at the property and discovered two gas leaks. Tr. 19, 48; PGW Exh. 8. The PGW technician made a temporary repair on the Complainant's fuel line and left a hazard tag. Tr. 19, 48; PGW Exh. 8. The PGW technician left the gas on at the service address. Tr. 21, 47; PGW Exh. 8. After the PGW technician fixed the gas leaks, no additional gas consumption registered on the meter for the service address. Tr. 41; PGW Exh. 3.

Although the service address was vacant at all times relevant to this case, the record demonstrated that there is an operational house heater at the service address, and that during a safety check, a PGW technician discovered two gas leaks. Tr. 14-16, 47-48; PGW Exh. 8. The record further demonstrated that gas consumption at the service address ended once the PGW technician fixed the gas leaks. Tr. 41; PGW Exh. 3. PGW's bills for gas consumption were based on this usage, and the Complainant did not offer anything to demonstrate that these bills were incorrect. Additionally, it is not surprising that the Complainant was unaware of these gas leaks based upon her own admission that she does not visit the service address. Tr. 22.

Under these circumstances, I cannot conclude that PGW billed the Complainant incorrectly for service. Accordingly, her Complaint regarding high bills is denied.

#### Claims of Inadequate and Unreasonable Service

The Complainant also asserted during the hearing that PGW failed to discontinue her gas service following a May 11, 2022, site visit, even though she asked the technician to shut off her service. The Complainant has raised a claim of inadequate or unreasonable service.

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.

66 Pa.C.S. § 1501.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 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. (footnote omitted).

*West Penn Power*, 478 A.2d at 949.

The statutory definition of “service” is to be broadly construed.<sup>3</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 PECO's actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

During the hearing, the Complainant testified that she was not physically present for the May 11, 2022, site visit but that she was present via telephone. The Complainant further testified that she requested that the PGW technician terminate her service at that time, and the PGW technician failed to honor her request. However, the Complainant did not offer anything beyond her testimony to substantiate her assertion that she requested termination during this site

---

<sup>3</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 ... 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 (emphasis original).

visit. “Mere bald assertions ... do not constitute evidence.” *Mid-Atlantic Pow. Sup. Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bur. of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987)); *see also, Steffy's Pattern Shop v. Frontier Comm. of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000). Contrary to the Complainant's assertion, the record reflects that on May 20, 2022, PGW issued the Complainant a letter advising that her bills were correct as rendered, that if gas appliances were not completely shut off at the unit consumption will record on the meter, and that PGW suggested she discontinue service if she is not using her gas appliances. Tr. 50-51; PGW Ex. 9.

In order to request termination of service, a PGW customer must contact PGW and speak with a customer service representative so that an appointment may be scheduled. Tr. 60. The Complainant did not contact PGW until September 9, 2022, to request termination of gas service to the service address. Tr. 25, 53; PGW Exh. 11. On September 11, 2022, a PGW technician shut the gas off at the service address. Tr. 53-54; PGW Exh. 11. Lastly, PGW does not have any record of the Complainant requesting termination of service prior to September 9, 2022. Tr. 55-56; PGW Exh. 13.

The record demonstrates that whenever the Complainant called PGW, PGW addressed her concerns. Moreover, when the Complainant followed PGW's established procedures for requesting termination of gas service to the service address, PGW terminated her gas service as requested. Under these circumstances, I cannot conclude that PGW provided the Complainant with inadequate or unreasonable service.

Accordingly, the Complainant's Complaint is denied in its entirety.

#### 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 Transp. Corp. v. Pa. Pub. Util. Comm’n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. “Mere bald assertions ... do not constitute evidence.” *Mid-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citing *Pa. Bur. of Cor. v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987)); *see also, Steffy’s Pattern Shop v. Frontier Comm. of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

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

6. The Complainant did not meet her burden of proving that PGW billed her incorrectly or provided her with unreasonable or inadequate service. 66 Pa.C.S. § 332(a).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Mary Jane Nolan at *Mary Jane Nolan v. Philadelphia Gas Works*, Docket No. C-2022-3036549 is denied; and

