

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sandra Dess	:	
	:	
v.	:	F-2022-3037039
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complainant’s Formal Complaint as she was not able to meet her burden of establishing that her bills were incorrect.

**HISTORY OF THE PROCEEDING**

On November 22, 2022, Sandra Dess (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent).<sup>1</sup> In the Complaint, Ms. Dess alleged that there were incorrect charges on her bill between January 13, 2022 and February 11, 2022 and requested that the Company waive the charges and any penalties and rebill her.

On December 22, 2022,<sup>2</sup> PECO filed an Answer, denying the material allegations of the Complaint.

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<sup>1</sup> This is a timely appeal of a BCS determination at BCS No. 3859266.

<sup>2</sup> The Secretary's Bureau served the Complaint on PGW on December 2, 2022.

On December 30, 2022, an Initial Telephonic Hearing Notice was issued for an initial telephonic hearing on February 8, 2023, at 1:30 p.m., and the matter was assigned to me.

I issued a Prehearing Order on February 3, 2023, which provided the parties with the procedures for the hearing.

The hearing convened as scheduled on February 8, 2023. The Complainant was represented by counsel, Marc Vogin, Esquire. The Complainant testified on her own behalf. PGW was represented by counsel, Graciela Christlieb, Esquire. PGW presented the testimony of Patricia Bernard, a customer review officer. PGW offered five exhibits which were entered into the record.

The record closed on March 17, 2023, when I received my copy of the 47-page hearing transcript.

#### FINDINGS OF FACT

1. The Complainant is Sandra Dess, who currently lives at 1109 West Lindley Avenue, Philadelphia, Pennsylvania 19141 (service address). Tr. 10.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides alone at the service address which is a twin home. Tr. 11.
4. The Complainant has a gas house heater and a non-functioning gas oven/stove. Tr. 12.
5. On March 16, 2022, the Complainant filed a dispute with PGW regarding a bill in the amount of \$410.77 for service from January 13, 2022 to February 11, 2022. Tr. 24-25; PGW Exh. 1.

6. On April 11, 2022, PGW sent a letter to the Complainant indicating that it had completed its investigation into her dispute and found that she had been billed correctly. Tr. 25; PGW Exh. 1.

7. On August 17, 2022, the Complainant filed another dispute with PGW regarding the bill for service from January 13, 2022 to February 11, 2022. Tr. 27; PGW Exh. 2.

8. On September 12, 2022, PGW sent a letter to the Complainant indicating that it had completed its investigation into the dispute and found that her bill was correct as rendered. Tr. 27; PGW Exh. 2.

9. On January 31, 2023, the meter was removed from the service address for testing at PGW's meter shop. Tr. 28-29; PGW Exh. 5.

10. On February 7, 2023, the meter from the service address was tested and found to be working within Commission-approved parameters.<sup>3</sup> Tr. 29; PGW Exh. 5.

11. Based on the meter testing, the meter from the service address tested on average at 99.8% for Open 100% and 99.5% for Check 20% which is within the 1.0% accuracy. *See* PGW Exh. 5.

12. The Complainant's bill for service from January 13, 2022 to February 11, 2022 was based on an actual meter reading. Tr. 32; PGW Exh. 3.

### 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).

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<sup>3</sup> Gas meter must test within 1.0% accuracy when passing gas at their rated capacity. 52 Pa. Code. § 59.21(a).

To establish a sufficient case and satisfy the burden of proof, the 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 that is 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 Trans. 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. Unempl. Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Pa. 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 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 asserts that her bill for service for the period January 13, 2022 to February 11, 2022 was too high. She indicated that it was not in line with bills from previous years for the same period.

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Co.*, 54 Pa.P.U.C. 98 (1980), 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. *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).

Ms. Bernard testified on behalf of PGW in this matter. She indicated that on March 16, 2022, the Complainant filed a dispute with PGW regarding a bill in the amount of \$410.77 for service from January 13, 2022 to February 11, 2022. Tr. 24-25; PGW Exh. 1. She also stated that on April 11, 2022, PGW sent a letter to the Complainant indicating that it had completed its investigation into her dispute and found that she had been billed correctly. Tr. 25; PGW Exh. 1. Ms. Bernard noted that on August 17, 2022, the Complainant filed another dispute with PGW regarding the bill for service from January 13, 2022 to February 11, 2022. Tr. 27; PGW Exh. 2. On September 12, 2022, PGW sent a letter to the Complainant indicating that it had completed its investigation into the dispute and found that her bill was correct as rendered. Tr. 27; PGW Exh. 2.

Further, Ms. Bernard testified that on January 31, 2023, the meter was removed from the service address for testing at PGW's meter shop. Tr. 28-29; PGW Exh. 5. On February 7, 2023, the meter from the service address was tested and found to be working accurately. Tr. 29; PGW Exh. 5. She also noted that the Complainant's bill for service from January 13, 2022 to February 11, 2022 was based on an actual meter reading. Tr. 32; PGW Exh. 3.

Although the Complainant's bill showed a nearly \$200 increase from the prior year, other than her own opinion, the Complainant had not otherwise presented any evidence that her bill was too high or incorrect. “Mere bald assertions ... do not constitute evidence.” *Pa. Bur. of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Sup. Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); *see also, Steffy's Pattern Shop v. Frontier Commc'ns of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000). On the other hand, PGW presented testimony and evidence that it had investigated the Complainant's dispute on two occasions and found that her bills were correct as rendered. Further, the PGW witness indicated that the meter from the service address was tested at PGW's meter shop on February 7, 2023 and found to be working accurately. It should also be noted that the Complainant's billing at the service address was based on actual meter readings. Based on the above, there does not appear to be any issues with how PGW billed the Complainant during the period at issue. Accordingly, the Complainant failed to meet her burden of proof in this regard, and her 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.” *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); *see also, Steffy's Pattern Shop v. Frontier Commc'ns of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

5. The Complainant has not met her burden of demonstrating that the bill PGW issued her for the period January 13, 2022 to February 11, 2022 was incorrect.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Sandra Dess against Philadelphia Gas Works, at *Sandra Dess v. Philadelphia Gas Works*, at Docket No. F-2022-3037039, is denied and dismissed.

2. That the docket at Docket No. F-2022-3037039 be closed.

Dated: June 15, 2023

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/s/  
Marta Guhl  
Administrative Law Judge