

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shane Timbers	:	
	:	
v.	:	F-2022-3037400
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complainant’s Formal Complaint as he was not able to meet his burden of establishing that his bills were incorrect or that he was incorrectly charged for utility service at the Service Address.

**HISTORY OF THE PROCEEDING**

On December 14, 2022, Shane Timbers (Complainant or Mr. Timbers) 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, Mr. Timbers alleged that there were incorrect charges on his bill related to an outstanding balance that was transferred to his account, and requested that the Company waive the charges and any penalties and rebill him.

---

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

On January 20, 2023,<sup>2</sup> PGW filed an Answer, denying the material allegations of the Complaint.

On January 24, 2023, an Initial Telephonic Hearing Notice was issued for an initial telephonic hearing on March 22, 2023, at 1:30 p.m., and the matter was assigned to me.

I issued a Prehearing Order on February 8, 2023, which provided the parties with the procedures for the hearing.

The hearing convened as scheduled on March 22, 2023. The Complainant appeared for the hearing *pro se*. The Complainant testified on his own behalf. The Complainant offered two exhibits at the hearing which were entered into the record. PGW was represented by counsel, Graciela Christlieb, Esquire. PGW presented the testimony of Wendy Vacca, a senior customer review officer. PGW offered five exhibits which were entered into the record.

The record closed on April 28, 2023, when I received my copy of the 57-page hearing transcript.

#### FINDINGS OF FACT

1. The Complainant is Shane Timbers, who currently lives at 664 North Conestoga Street, Philadelphia, Pennsylvania 19131 (Service Address). Tr. 9.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides alone at the service address. Tr. 9.
4. Prior to residing at the Service Address, the Complainant rented the residence to his father. Tr. 10.

---

<sup>2</sup> The Secretary's Bureau served the Complaint on PGW on December 29, 2022.

5. The Service Address contains a gas water heater, gas stove, and gas house heater. Tr. 15.

6. The Complainant has owned the Service Address for 32 years. Tr. 19.

7. On August 25, 2022, the Complainant made a request to have gas service at the Service Address put into his name. Tr. 26; PGW Exh. 1.

8. At that time, PGW informed the Complainant that there was an outstanding balance for service at the address which would be transferred to his account. Tr. 26; PGW Exh. 1.

9. On the same date, the Complainant filed a dispute with PGW regarding an outstanding balance at the Service Address. Tr. 26; PGW Exh. 1.

10. On September 22, 2022, PGW sent a letter to the Complainant indicating that it had completed its investigation into the dispute and found that the Complainant was responsible for the outstanding balance under 52 Pa. Code §56.35 because he has been associated with the Service Address since 1992. Tr. 26-27; PGW Exh. 1.

11. On September 12, 2022, PGW transferred the balance of \$916.46 to the Complainant's account from the previous tenant. Tr. 33; PGW Exh. 3.

12. Review of the customer contacts by PGW indicated that the Complainant contacted PGW and requested turn-off for service in his name at 5432 Gainor Road, Philadelphia effective March 23, 2022. Tr. 34; PGW Exh. 4.

13. PGW determined that the Complainant's primary address was 5432 Gainor Road until March 23, 2022. Tr. 34-35; PGW Exh. 4.

14. Based on the above information, PGW adjusted the amount of the outstanding balance transferred to the Complainant's account from \$916.46 to \$343.46 as of March 15, 2023, which accounted for gas usage at the Service Address for the time period from March 23, 2022 to August 25, 2022. Tr. 35; 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).

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. Cmwlt. 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. Cmwlt. 1982); *Edan Trans. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlt. 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 Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 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. Cmwlt. 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. Cmwlt. 2001).

### Billing Dispute

The Complainant asserts that PGW incorrectly transferred an outstanding balance to his account. While he acknowledged that he has owned the Service Address for a number of years, he contends that the Service Address was rented by his father and that he is a part of the Landlord-Tenant Cooperation Program and should not be held responsible for his father's balance.

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; *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).

Further, a public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant, with the following exceptions.

(1) A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years from the date of the service request. The 4-year limit does not apply if the balance includes amounts that the public utility was not aware of because of fraud or theft on the part of the applicant.

(2) A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in this paragraph, used to determine the applicant’s liability for any outstanding balance.

52 Pa. Code §56.35(b)(1)-(2).

Ms. Vacca testified on behalf of PGW in this matter. She testified that on August 25, 2022, the Complainant made a request to have gas service put into his name at the Service Address. Tr. 26; PGW Exh. 1. On the same date, she indicated that the Complainant also filed a dispute with PGW regarding an outstanding balance at the Service Address. Tr. 26; PGW Exh. 1. Ms. Vacca stated that on September 22, 2022, PGW sent a letter to the Complainant which indicated that it had completed its investigation in the dispute and found that

the Complainant was responsible for the outstanding balance under 52 Pa. Code §56.35 because he has been associated with the Service Address since 1992. Tr. 26-27; PGW Exh. 1. On September 12, 2022, PGW transferred the balance of \$916.46 to the Complainant's account from the previous tenant. Tr. 33; PGW Exh. 3.

Further, Ms. Vacca stated that PGW has since corrected the transferred balance in this matter. The Complainant contacted PGW and requested turn-off for service in his name at 5432 Gainor Road, Philadelphia effective March 23, 2022. Tr. 34; PGW Exh. 4. PGW determined that the Complainant's primary address was 5432 Gainor Road until March 23, 2022. Tr. 34-35; PGW Exh. 4. Based on the above information, PGW adjusted the amount of the outstanding balance transferred to the Complainant's account from \$916.46 to \$343.46 as of March 15, 2023. Tr. 35; PGW Exh. 3.

Although the Complainant contends that he resided elsewhere and that his father was a tenant at the Service Address, the Complainant had not otherwise presented any evidence that PGW erred in holding him responsible for the outstanding balance at the Service Address. “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). The lease that the Complainant presented was not signed. Further, the renting suitability form does not establish that the Complainant was residing elsewhere during the time period that PGW held him responsible for the outstanding bill. The Complainant acknowledged that he has been the owner of the Service Address for many years. Moreover, PGW presented testimony and evidence that it had investigated the Complainant's dispute and found that the Complainant was associated with the Service Address since 1992. PGW also indicated that when it found that the Complainant's primary address was 5432 Gainor Road until March 23, 2022, it adjusted the amount of the outstanding balance transferred to the Complainant's account from \$916.46 to \$343.46 as of March 15, 2023.

Based on the above, there is nothing in the record that shows that PGW incorrectly billed the Complainant or was incorrect in holding the Complainant responsible for the outstanding balance. Accordingly, the Complainant failed to meet his burden of proof in this regard, and his 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. The Commission will consider the following factors when a high bill is alleged: 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 v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980)

5. "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).

6. A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there. 52 Pa. Code §56.35 (b) (1).

7. The Complainant has not met his burden of demonstrating that the bill PGW issued was incorrect.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Shane Timbers against Philadelphia Gas Works, at Shane Timbers v. Philadelphia Gas Works, at Docket No. F-2022-3037400, is denied and dismissed.

2. That the docket at Docket No. F-2022-3037400 be closed.

Dated: July 26, 2023

\_\_\_\_\_  
/s/  
Marta Guhl  
Administrative Law Judge