

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dawn Graham

v.

Philadelphia Gas Works

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C-2022-3032494

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Formal Complaint because the Complainant failed to meet her burden of proving that the Respondent erred in denying her application for service in her name at the service address. The Complainant also failed to establish that there were incorrect charges on the bills.

HISTORY OF THE PROCEEDING

On May 5, 2022, Dawn Graham (Complainant or Ms. Graham) 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 contends that the utility was threatening to shut off utility service at the Service Address and there were incorrect charges on the bills. The Complainant requests that service be placed in her name and requests an adjustment to her billing, as well as a payment arrangement.

On June 6, 2022¹, Respondent filed an Answer and New Matter denying the material allegations of the Complaint and alleging that the Commission lacked jurisdiction to hear the issues in the case because it relates to an estate. On the same date, Respondent also filed Preliminary Objections requesting that the Complaint be dismissed because the Commission does not have jurisdiction to decide this matter as it relates to an issue with an estate.

On June 30, 2022, PGW filed a Motion for Judgement on the Pleadings arguing that the Commission lacked jurisdiction to hear the matters in the Complaint as it related to an estate dispute.

By Corrected Telephonic Hearing Notice dated August 3, 2022, an initial hearing was scheduled for September 20, 2022, at 10:00 a.m., and the matter was assigned to Deputy Chief Administrative Law Judge Joel Cheskis.

On August 11, 2022, DCALJ Cheskis issued an Order denying the Preliminary Objections and Motion for Judgement on the Pleadings and indicating that the matter should proceed to hearing on September 20, 2022.

Also on August 11, 2022, DCALJ Cheskis issued a Prehearing Order which 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, a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

On September 15, 2022, PGW filed a Motion for Continuance of the hearing scheduled for September 20, 2022. On September 16, 2022, DCALJ Cheskis issued an Order granting the continuance request.

On September 16, 2022, a Cancellation/Reschedule Hearing Notice was issued, and the matter was rescheduled for November 17, 2022, at 10:00 a.m. before DCALJ Cheskis.

¹ The Formal Complaint was served on the Respondent by the Secretary's Bureau on May 17, 2022.

On November 16, 2022, a Judge Change Notice was issued, and the matter was reassigned to me.

The hearing convened as scheduled on November 17, 2022. The Complainant did not appear for the hearing. Respondent appeared and was represented by Graciela Christlieb, Esq., who had a witness present as well. PGW moved to have the Complaint dismissed for lack of prosecution. Later, the Complainant reached out to the Harrisburg scheduling office to indicate that she had been involved in a car accident and was dealing with a recent death in her family. The Complainant requested a new hearing date. The request was later forwarded to me.

I forwarded the Complainant's request to counsel for PGW, and the Company indicated that it objected to her request for a new hearing date. On March 7, 2023, I issued an Order which overruled the objections of PGW and granted the Complainant's request for a new hearing date and reopened the record.

On March 9, 2023, a Further Hearing Notice was issued, and the matter was scheduled for a further hearing on April 19, 2023, at 10:00 a.m.

The hearing proceeded as scheduled on April 19, 2023. Complainant participated *pro se* and testified. The Complainant offered one exhibit, which was entered into the record at the hearing. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Glace and David Rubin, Esq. Respondent offered two exhibits, which were all entered into the record. At the end of the hearing, I requested that the Complainant provide a copy of the trust document for the estate in question. I gave the Complainant until the end of the day to provide copies to me and counsel for PGW. Tr. 135. I gave counsel for PGW seven days from the date of the hearing to file any written objections to the exhibit. Tr. 135.

The Complainant provided a copy of her father's trust document on April 20, 2023, as well as a number of other documents which were not requested, including pictures, emails and other documents. PGW submitted written objections to the documents that the

Complainant submitted. I will overrule the objections in part and sustain the objections in part and the trust document is entered into the record through this decision as Complainant's Late Filed Exhibit No. 2. On April 26, 2023, PGW submitted a late filed exhibit marked PGW Exh. 3, which appears to be legal documents related to an eviction and in vitro trust. This document was not requested and will not be entered into the record.² All other documents that the Complainant submitted after the hearing are not entered into the record.

The hearing resulted in a 138-page transcript. The record closed on May 25, 2023, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Dawn Graham, who resides at 315 North 54th Street, Philadelphia, Pennsylvania 19139. Tr. 16.
2. The Respondent is Philadelphia Gas Works.
3. The Service Address was owned by the Complainant's father, Allen Graham. Tr. 17.
4. The Complainant's father set up a trust for the Service Address on July 8, 2008. Tr. 17.
5. The Complainant lived with her father at the Service Address since approximately 2010. Tr. 33.
6. Allen Graham passed away June 20, 2020. Tr. 33.

² In a letter dated April 26, 2023, PGW submitted a document it labeled PGW Exh. 3. However, there was no discussion of this exhibit at the hearing on April 19, 2023 and I did not give the Company leave to file a late filed exhibit. As such, PGW Exh. 3 is stricken from the record.

7. The Complainant continued to live in the house after her father passed.
Tr. 33.

8. PGW continued to send bills for service at the Service Address in the name of Allen Graham. Tr. 67-68; PGW Exhs. 1 & 2.

9. On December 17, 2020, the Complainant contacted PGW regarding billing on her father's account. Tr. 65; PGW Exh. 2.

10. On March 1, 2021, the Complainant filed a dispute with PGW regarding her father's bills. Tr. 69; PGW Exh. 2.

11. On March 27, 2021, PGW sent a letter to the Service Address indicating that it completed its investigation regarding the billing and found it to be correct as rendered. Tr. 70; PGW Exh. 2.

12. PGW also informed the Complainant that a special meter test could be requested, but the Complainant did not make such a request. Tr. 70; PGW Exh. 2.

13. On August 4, 2021, a Petition for Exclusive Possession of the Service Address was filed with the Orphan's Court. Tr. 123; PGW Exh. 2.

14. On October 4, 2021, the court issued a Decree which granted possession of the Service Address to Alfred Graham, as Trustee of the Allen Graham Revocable Living Trust. Tr. 123; PGW Exh. 2.

15. On the same date, the Decree was sent to the Sheriff of Philadelphia to begin eviction of the Complainant from the Service Address. Tr. 124; PGW Exh. 2.

16. The Complainant was evicted from the Service Address in November 2021 and returned on her own volition without the permission of the Trust in March 2022. Tr. 33-34, 124.

17. On April 22, 2022, PGW sent a Shut Off Notice addressed to Allen Graham for non-payment. Tr. 75; PGW Exh. 2.

18. On April 25, 2022, Alfred Graham, brother of Allen Graham, contacted PGW to inform them of his brother's passing. Tr. 75; PGW Exh. 2.

19. Alfred Graham was informed that he needed to provide a copy of the death certificate and a letter requesting that service be discontinued in Allen Graham's name. Tr. 75; PGW Exh. 2.

20. On May 3, 2022, the Complainant contacted PGW and indicated that she was the owner of the Service Address and was advised to apply for service in her name. Tr. 76-77; PGW Exh. 2.

21. The Complainant was told to send in two forms of identification and the deed for the Service Address for her application for service. Tr. 77; PGW Exh. 2.

22. PGW received a copy of a 12-page living trust document but no identification or deed from the Complainant. Tr. 78; PGW Exh. 2.

23. On May 16, 2022, PGW received a copy of Allen Graham's death certificate and a letter requesting that service be discontinued at the Service Address Tr. 81; PGW Exh. 2.

24. On the same date, PGW removed Allen Graham's name on the account but did not shut off gas service. Tr. 83-84; PGW Exh. 2.

25. On September 20, 2022, PGW contacted the Complainant to investigate the claim of foreign load and to exchange the meter for testing based on the Formal Complaint she filed with the Commission. Tr. 86; PGW Exh. 2.

26. On September 21, 2022, a PGW technician arrived at the Service Address to investigate the foreign load complaint and to exchange the meter for testing. Tr. 86; PGW Exh. 2.

27. The technician found no evidence of a foreign load at the Service Address. Tr. 89; PGW Exh. 2.

28. The technician wrote a hazard tag due to a clogged chimney and left the gas off at the residence. Tr. 87; PGW Exh. 2.

29. The meter for the Service Address was tested on October 4, 2022, and was found to be operating at 99.2 % for 100% open and 99.0 % for 20% check. Tr. 90; PGW Exh. 2.

30. The total balance on the account for Allen Graham for the Service Address is \$2,344.90. Tr. 60; PGW Exh. 1.

31. The Complainant is not being held responsible for the balance on Allen Graham's account. Tr. 61.

32. According to the Trust documents, the Service Address belongs to Alfred Graham. Complainant Late-Filed Exhibit No. 2.

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). That is, 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 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 & 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 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).

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).

Application for Service at the Service Address

The Complainant alleges that she is the owner of the Service Address after the passing of her father, Allen Graham. She indicated that she wanted to put service under her

name. However, the Trust documents that the Complainant submitted indicate that Alfred Graham is the owner of the Service Address under the terms of the Trust.

Section 1403 of the Public Utility Code defines “Customer” as follows:

“Customer.” A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed, or lease of the property for which the residential utility service is requested.

66 Pa.C.S. § 1403.

Further, under 52 Pa. Code § 56.2, an applicant for utility service is defined as follows:

(i) A natural person at least 18 years of age not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed, or lease of the property for which the residential public utility service is requested.

52 Pa. Code § 56.2.

The Service Address was owned by the Complainant’s father, Allen Graham. Tr. 17. The Complainant’s father set up a trust for the Service Address on July 8, 2008. Tr. 17. The Complainant lived with her father at the Service Address since approximately 2010. Tr. 33. Allen Graham passed away on June 20, 2020. Tr. 33. The Complainant continued to live in the house after her father passed. Tr. 33. PGW continued to send bills for service at the Service Address in the name of Allen Graham. Tr. 67-68; PGW Exhs. 1 & 2.

“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); *Pa. Bur. Of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *see also, Steffy's Pattern Shop v. Frontier Commc'ns of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

Complainant has not established a *prima facie* case. The Complainant did not present any evidence to establish that she is the owner of the Service Address. Service was in the name of

Allen Graham. *See* PGW Exhs.1 and 2. PGW was not informed of Allen Graham's death until April 25, 2022, when Alfred Graham, decedent's brother, contacted PGW and requested that service be discontinued in Allen Graham's name. Further, On August 4, 2021, a Petition for Exclusive Possession of the Service Address was filed with the Orphan's Court. Tr. 123; PGW Exh. 2. On October 4, 2021, the court issued a Decree which granted possession of the Service Address to Alfred Graham, as Trustee of the Allen Graham Revocable Living Trust. Tr. 123; PGW Exh. 2. On the same date, the Decree was sent to the Sheriff of Philadelphia to begin eviction of the Complainant from the Service Address. Tr. 124; PGW Exh. 2. The Complainant was evicted from the Service Address in November 2021 and returned on her own volition without the permission of the Trust in March 2022. Tr. 33-34, 124. The Complainant did not provide any additional evidence to establish that she is entitled to reside at the property or is the lawful owner.

Moreover, on May 3, 2022, the Complainant contacted PGW and indicated that she was the owner of the Service Address and was advised to apply for service in her name. Tr. 76-77; PGW Exh. 2. The Complainant was told to send in two forms of identification and the deed for the Service Address for her application for service. Tr. 77; PGW Exh. 2. PGW received a copy of a 12-page living trust document but no identification or deed from the Complainant. Tr. 78; PGW Exh. 2.

Then on May 16, 2022, PGW received a copy of Allen Graham's death certificate and a letter requesting that service be discontinued at the Service Address Tr. 81; PGW Exh. 2. On the same date, PGW removed Allen Graham's name on the account but did not shut off gas service. Tr. 83-84; PGW Exh. 2.

Based on all of the above, it is clear that the Complainant has failed to meet her burden of proof under the law to establish that she is either an applicant for service or a customer for the Service Address. While the Complainant may be disputing ownership of the property, there is nothing in the record to establish that she is entitled to service in her name at the Service Address.

Billing Dispute

The Complainant is disputing the bills from when she was living in the house with her father.

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 (Opinion and 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 also Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011).

On December 17, 2020, the Complainant contacted PGW regarding billing on her father's account. Tr. 65; PGW Exh. 2. On March 1, 2021, the Complainant filed a dispute with PGW regarding her father's bills. Tr. 69; PGW Exh. 2. On March 27, 2021, PGW sent a letter to the Service Address indicating that it completed its investigation regarding the billing and found

it to be correct as rendered. Tr. 70; PGW Exh. 2. PGW also informed the Complainant that a special meter test could be requested, but the Complainant did not make such a request. Tr. 70; PGW Exh. 2.

Further, PGW's witness, Ms. Glace, testified that on September 20, 2022, PGW contacted the Complainant to investigate the claim of foreign load and to exchange the meter for testing based on the Formal Complaint she filed with the Commission. Tr. 86; PGW Exh. 2. On September 21, 2022, a PGW technician arrived at the Service Address to investigate the foreign load complaint and to exchange the meter for testing. Tr. 86; PGW Exh. 2. The technician found no evidence of a foreign load at the Service Address. Tr. 89; PGW Exh. 2. The technician wrote a hazard tag due to a clogged chimney and left the gas off at the residence. Tr. 87; PGW Exh. 2. The meter for the Service Address was tested on October 4, 2022, and was found to be operating at 99.2 % for 100% open and 99.0 % for 20% check. Tr. 90; PGW Exh. 2.

The Complainant did not present any evidence besides her own testimony that the bills were too high or that her gas service was being used by a neighbor. Contrary to the Complainant's testimony, the record reflects that PGW sent a technician to the Service Address in September 2022 to investigate the Complainant's high bill dispute and foreign load allegations. The record further reflects that the technician did not find any evidence of foreign load at the Service Address, and that the meter was removed and tested and found to be operating within the Commission's allowances for gas meters.³ As such, the Complainant has not met her burden of proving that the charges on her father's bills were incorrect and the Complainant must be dismissed.⁴

³ Gas meter must test within 1.0% accuracy when passing gas at their rated capacity. 52 Pa. Code. § 59.21(a). The meter from the Service Address tested within the 1.0 % allowance at 99.2 % and 99.0%. PGW Exh. 2.

⁴ I would also note that the Complainant requested a payment arrangement. However, the Complainant is not a customer or applicant for service at the Service Address. As such, she is not entitled to a payment arrangement. See 66 Pa. C.S. § 1405(a). Further, according to PGW, the Complainant is not being held responsible for the balance on her father, Allen Graham's, account. Tr. 61.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Pursuant to 66 Pa.C.S. § 332(a), 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. A "customer" is defined as a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed, or lease of the property for which the residential utility service is requested. 66 Pa.C.S. § 1403.

5. An applicant for utility service is defined as natural person at least 18 years of age not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed, or lease of the property for which the residential public utility service is requested. 52 Pa. Code § 56.2.

6. The Commission stated that it will 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 v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

7. "[T]he 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.” *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011).

8. “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); *Pa. Bur. of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *see also, Steffy's Pattern Shop v. Frontier Communications of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

9. The Complainant did not meet her burden of establishing that PGW violated the Public Utility Code, Commission regulations or a Commission Order regarding its denial of placing the account in her name. 66 Pa.C.S. § 332(a).

10. The Complainant did not meet her burden of proving that there were incorrect charges on her father's account. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. The Complainant's Late Filed Exhibit No. 2 is entered into the record.
2. That the Complaint of Dawn Graham in *Dawn Graham v. Philadelphia Gas Works* at Docket No. C-2022-3032494 is denied and dismissed and;

3. That Docket No. C-2022-3032494 be marked closed.

Date: August 23, 2023

_____/s/_____
Marta Guhl
Administrative Law Judge