

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bryan Garner	:	
	:	
v.	:	F-2022-3036883
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint filed by Complainant against Philadelphia Gas Works. Complainant failed to satisfy his burden of demonstrating that Philadelphia Gas Works violated the Public Utility Code, a Commission regulation or Commission order with respect to billing for natural gas service to his home or meter testing.

HISTORY OF THE PROCEEDING

On October 28, 2022, Bryan E. Garner (“Mr. Garner” or “Complainant”) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (“Commission”) against Philadelphia Gas Works Company (“PGW” or “Respondent”).¹ In the Complaint, Mr. Garner alleges that PGW was threatening to shut off his service, there are incorrect charges on his bill for the period November 2021 through March 2022, and he is having reliability, safety or quality problems with his service. In addition, the Complainant indicated that he had other

¹ The Complainant sought timely review of the dismissal of his informal complaint filed with the Commission’s Bureaus of Consumer Services at BCS Case No. 3859458.

issues arising out of a heater installation at his residence. As relief, Mr. Garner requested *inter alia* inspection and replacement of a gas meter installed by PGW in 2021, a reduction in his bill, and inspection of PGW's system and equipment.²

On December 13, 2022, the PGW filed a timely Answer.³ The Respondent acknowledges that on August 18, 2022, a 10-day shut off notice was issued to the Complainant. In its Answer, the Respondent denies that there is a reliability or quality problem with the service provided to Complainant. PGW averred that bills for service issued to the Complainant were based on actual meter readings and there were no incorrect charges on the bill for natural gas service to Complainant's home. Lastly, Respondent requested that the Complainant be denied relief and the Complaint be dismissed in its entirety.

On December 19, 2022, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for February 24, 2023, at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, I served a prehearing order on January 3, 2023, setting forth hearing information and the rules that would govern the proceeding.

The hearing convened as scheduled on February 24, 2023, at 10:00 a.m. The Complainant appeared *pro se* with two potential witnesses. Graciela Christlieb, Esquire, attended on behalf of Respondent, along with a witness for Respondent. Shortly after the hearing began, the Complainant requested a continuance of the hearing to allow him an opportunity to secure counsel to represent him in this matter. Tr. 19. PGW objected to the Complainant's request for a continuance. Tr. 19. The Respondent's objection was denied, the Complainant's motion was granted, and the hearing was continued. An Order issued February 24, 2023 memorialized the ruling on the motion and the granting of a continuance.

² The Complaint was handwritten and portions of it were difficult to read. Under Question 5 "Requested Relief" the Complainant wrote "PUC should have a third part agency look into the [illegible] system." Complaint at ¶ 5.

³ The Complaint was served on the Respondent on November 21, 2022.

On March 13, 2023, the Commission electronically served a Cancelled/Rescheduled Telephonic Hearing Notice on the parties rescheduling the call-in telephonic hearing for this matter for March 24, 2023, at 10:00 a.m.

The hearing reconvened, as rescheduled. Complainant appeared *pro se* and presented the testimony of Lisa Miller. Complainant identified three exhibits that were admitted into the record at the hearing. Attorney Christlieb appeared on behalf of PGW and presented the testimony of Patricia Bernard, a PGW customer review officer. Respondent identified five exhibits that were admitted into the record at the hearing. During the hearing, counsel for PGW indicated that following the hearing, an update of PGW Exhibit 4 would be submitted for the record. Mr. Garner was informed that he would have five days to review any such exhibit submitted by PGW and to state any objection to its entry into the record. Tr. 111-112. Shortly after the hearing, counsel to PGW sent an email to my office indicating that she was transmitting an “update of an already admitted exhibit [4].” The attachment to PGW counsel’s email identified the late-filed exhibit as Exhibit 6 and was accompanied by a Certificate of Service indicating that it had been served upon the Complainant. The Complainant did not object to the entry of Exhibit 6 within the five-day period for objections designated at the hearing. Accordingly, PGW Exhibit 6 will be entered into the record through this decision.

The record in this case closed on June 8, 2023, upon the filing of the hearing transcript and the parties’ exhibits with the Commission.⁴

FINDINGS OF FACT

1. The Complainant is Bryan E. Garner.
2. The Respondent is Philadelphia Gas Works.

⁴ At the hearing, the parties were specifically directed to send all exhibits to the court reporter for inclusion in the record. Tr., 10-11, 108-112. The Exhibits transcript was not finalized until June 5, 2023 and it indicates that the Complainant failed to provide Complainant Exhibits 2 and 3 to the court reporter for inclusion in the record.

3. Complainant resides at 5924 Pulaski Avenue, Philadelphia, PA 19144 (service address). Tr.40.

4. Complainant has a home heating system, a water heater, a stove and a clothes dryer installed in his home, all of which are gas-powered. Tr. 58.

5. The Complainant's heating system did not operate properly and consistently during 2019 and into 2020. Tr. 42.

6. When the Complainant's home heating system did not operate properly in 2019 and 2020, it was serviced by PGW employees who were working off-duty. Tr. 42-43.

7. The Complainant purchased equipment necessary to replace the heating system at the service address in August of 2021 but did not have the heating system serviced or replaced at that time. Tr. 41, 43.

8. The gas meter at the service address was replaced by PGW in September 2021. Tr. 45.

9. The Complainant tried to have new heating equipment installed at his home "closer to the winter" of 2021. Tr. 43.

10. From August 2021 through March of 2022, the Complainant used portable electric-powered space heaters to heat three rooms in his home. Tr. 41, 59.

11. Although the Complainant had used portable electric-powered space heaters to heat three rooms in his home in the months of November 2021, December 2021, and January through March 2022, his gas billing and usage was slightly elevated when compared to the average gas billing and usage for the account for those months in 2019, 2020 and 2022.

12. The gas meter at Complainant's home was removed on January 27, 2023, for testing. Tr. 45, 53, 84. Respondent Exhibit 5.

13. The Complainant informed PGW that he wished to view the meter test in person. Tr. 59.

14. PGW agreed to the Claimant's request to view the meter test.

15. The meter test was scheduled by PGW's counsel for January 30, 2023 at 9:15 a.m. at PGW's corporate headquarters.

16. On January 30, 2023, the Complainant arrived at PGW's corporate headquarters at 8:45 a.m., well before for the scheduled meter test.

17. The Complainant left PGW corporate headquarters without viewing the meter test due to miscommunication with PGW staff in the lobby and because he had to get to work. Tr. 66.

18. The gas meter removed from the service address on January 27, 2023, was tested by PGW on January 30, 2023, and was found to function within allowances for accuracy permitted under Commission regulations. Tr. 86.

DISCUSSION

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named

utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Complainant has alleged that Respondent violated section 1501 of Title 66 of the Public Utility Code regarding reasonable, safe, and quality service. 66 Pa.C.S. § 1501. Therefore, Complainant has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains with the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Moreover, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super 1960). A complainant cannot establish a case merely by stating his or her personal beliefs, since assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Utility companies are required by law to provide adequate and reasonable service. Section 1501 of the Public Utility Code states:

§ 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. This section does not require utility companies to provide perfect service. *Elkin v. Bell Tel. Co. of Pa.*, 372 A.2d 1203 (Pa. Super. 1987).

High Bill Dispute

In his Complaint and at the hearing, the Complainant maintained that his gas bills for the period November 2021 through March 2022 are disproportionate to the amount of gas he was using during that period. The Complainant asserts that because his gas heating system was not operating during that period, he could not have consumed the amount of gas for which he was billed by PGW. The Complainant contends that PGW's usage and/or meter readings were inaccurate.

PGW asserts that the bills issued to the Complainant are correct as rendered and were based on actual meter readings. PGW also avers that a meter test confirmed that the meter functioned properly while it was installed in the Complainant's home.

The burden of proof for "high bill" complaints has been explained in *Waldron v. Philadelphia Electric Co. (Waldron)*, 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.

The Commission explained the burden of proof set forth in *Waldron* as follows:

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.”

Thomas v. PECO Energy Co., Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011) (emphasis in original).

The Complainant testified that his PGW bills for the “winter months” of 2021-22 were abnormally high when compared to those of the two immediately preceding winters and the winter that followed. He also testified during the period November 2021 through March 2022, because he had no gas heat, he only heated three rooms in his home and relied solely on electric space heaters to do so. The Complainant argued that he has consistently paid bills rendered to him by PGW and that he only contested gas bills for those months in which he did not use his gas heater.

Lisa Miller appeared as a witness for the Complainant. Ms. Miller testified that she visited Mr. Garner’s home during the winter of 2022 and confirmed that when she did so, “it was freezing,” and Mr. Garner was relying on electric-powered space heaters to warm a few rooms of his home. Tr. 70-72.

The Respondent presented one witness, Patricia Bernard, a Customer Review Officer. Tr. 74-75. Ms. Bernard testified that she investigated the Complaint filed by Mr. Garner with the Commission in August 2022. Tr. 74. She stated that although he did not submit a meter test form to PGW or pay the normal meter testing fee, the gas meter at his home was removed from the Complainant’s home and tested for accuracy. Tr. 82, 84. PGW Exhibit 5. Further, she stated that the accuracy test performed on the gas meter revealed that the meter functioned within allowances for accuracy permitted under Commission regulations. Tr. 86. Finally, Ms. Bernard testified that bills for gas service reflect gas usage, which may fluctuate based on the amount of gas needed to maintain the customer’s chosen indoor temperature despite fluctuating outdoor temperature or other internal conditions. Tr. 93-94. PGW Exhibits 4, 6.

The Complainant’s billing and gas usage at the service address during the months November through March for the years for 2020 through 2023 are indicated in the following charts.

	2019-2020	2020-2021	2021-2022	2022-2023	Average	2021-2022 v Average
November	\$ 37.67	\$ 30.93	\$ 39.24	\$ 48.31	\$ 39.04	100.5%
December	\$ 54.43	\$ 262.36	\$ 206.70	\$ 128.77	\$ 163.07	126.8%
January	\$ 217.92	\$ 204.40	\$ 714.52	\$ 397.87	\$ 383.68	186.2%
February	\$ 292.56	\$ 153.43	\$ 738.14	\$ 465.59	\$ 412.43	179.0%
March*	\$ 162.02	\$ 219.51	\$ 342.17	\$ 74.45	\$ 199.54	171.5%
Month = month in which PGW bill was issued.						
* Complainant no gas heat “test” conducted in 2023.						

CCF USAGE	2019-2020	2020-2021	2021-2022	2022-2023	Average	2021-2022 v Average
November	17	12	16	16	15.3	104.92%
December	29	180	115	60	96.0	119.79%
January	142	132	417	195	221.5	188.26%
February	185	102	426	213	231.5	184.02%
March*	101	149	184	35	117.3	156.93%
Month = month in which PGW bill was issued						
* Complainant no gas heat “test” conducted in 2023.						

PGW Exhibit 6.

A comparison of the Complainant's billing and usage history for November 2021 through March 2022 with the average for each of those months in the two preceding years and the following year reveals minimally higher billing and usage for November 2021, with billing higher by 0.5% and usage by 4.9%. Similar comparisons for December 2021 indicate a higher degree of variance from other years, with billing 26.8% and usage 19.8% higher. Comparisons for January and February reflect even greater variances. Billing variances for December and January were 86.2% and 88.3%, respectively; usage variances were 79% and 84%, respectively. Although the data for March includes information gathered for 2023, when the Complainant turned off his heating system as a test, nevertheless, it shows a significant variance of 71.5% in billing and 56.9% in usage. Tr. 113. PGW Exhibit 6.

These figures in the charts above demonstrate that the Complainant's gas billing and usage was slightly elevated in November 2021 and extremely elevated for December 2021 and January through March 2022. The Complainant and his witness, Ms. Miller also provided credible testimony that during December 2021 and continuing through early 2022, the Complainant relied on electric-powered space heaters to heat a few rooms in his home. Although the Complainant did not provide sufficient evidence to support the finding of a *prima facie* case of high billing for the month of November 2021, the evidence does present a *prima facie* case of high billing for December 2021 and January through March 2022.

In response to the *prima facie* case established by the Complainant, PGW presented credible testimony and documentary evidence that the meter installed at the Complainant's home in September 2021 was tested and was functioning within regulatory limits. In addition, by his own admission, the Complainant's heating system had not been functioning properly for some time prior to November 2021. Accordingly, the testimony and evidence presented by PGW rebuts the *prima facie* case established by the Complainant.

The burden of persuasion then passed back to the Complainant to prove that the high billing anomalies were due to PGW's actions. Although Mr. Garner provided convincing testimony that he has an exemplary record of paying PGW issued gas bills, when he believed they were accurate, unfortunately the issue here does not concern the historical *timeliness* of Mr.

Garner's payments. Rather, the issue before me here is the *accuracy* of the disputed bills. While I recognize that Mr. Garner has a commendable payment history, simply put he failed to demonstrate that the bills issued for December 2021 and January through March 2022 were inaccurate or that the meter installed in his home malfunctioned.

The credible testimony and evidence presented by PGW refutes Mr. Garner's argument that the meter was faulty. The Complainant presented no testimony from a qualified service technician or documentary evidence demonstrating that his home heating system was not functioning properly from December 2021 through March 2022 or that the system did not use or consume the quantity of gas billed for by PGW. Absent such testimony or evidence, it cannot be said that the high billing and usage for December 2021 through March 2022 were attributable to any action or inaction by PGW.

In this case, the Complainant argued strenuously that his gas bills were unusually high and that the high billing could be attributed to the gas meter PGW installed in his home in September 2021. However, the Complainant provided no expert testimony or documentary evidence that the meter, rather than some other issue or condition existing at his home caused the high billing. According to his own testimony, he conducted an informal "test" in March 2023 and the meter appeared to function properly, yet the Complainant gave no explanation as to how the alleged defect was cured. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n.*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987). PGW demonstrated with clear evidence and testimony that the meter functioned properly, rebutting Mr. Garner's argument.

Having failed to carry the burden of persuasion that the high billing was caused by or the result of matters within PGW's control, the Complainant has failed to meet his burden of proof regarding his claim of high billing.

Unreasonable Customer Service

At the hearing, Mr. Garner testified that he requested a meter test. Tr. 59. He also testified that he was ready and available to observe the meter test scheduled for January 30, 2023 and that he was unable to do so through no fault of his own. Tr. 59, 60-64. Mr. Garner's testimony may be viewed as a claim of unreasonable service by PGW.

Ms. Bernard testified that PGW voluntarily agreed to test the allegedly defective meter and allow Mr. Garner to observe the testing. Tr. 80-82. She also testified that Mr. Garner failed to appear in the lobby of PGW's offices for the meter test as originally scheduled at 9:15 a.m. or when it was rescheduled for 9:30 a.m. the same day. Tr. 83. Mr. Garner acknowledged that when he appeared at PGW's offices for the meter test he failed to correctly identify the person he was to meet and left the building to use his cellphone. Tr. 61-64. Finally, he stated that he left without observing the test because he needed to get to work. Tr. 65.

With the exception of the exact time PGW counsel called the Complainant to reset the time for the meter test, the parties provided consistent testimony as to the events of that morning. It appears that Mr. Garner's failure to properly identify the person he was to meet at PGW's offices led to a series of events that caused him to be absent for the testing of his meter. There is no allegation nor is there any evidence that any miscommunication between PGW and the Complainant on January 30, 2023 was intentional or the result of any action or inaction by PGW taken in bad faith. To the contrary, PGW's willingness to conduct the test in Mr. Garner's presence, waiver of the normal testing fee, and attempts to communicate with him on the day of the test show PGW's flexibility and efforts to accommodate Mr. Garner and his schedule. There is insufficient evidence on which to base a finding of unreasonable service.

The Complainant was understandably frustrated that he was unable to witness the meter test. Here, again, the Complainant did not meet his burden of proving that any action or inaction of PGW rises to the level of unreasonable conduct. Assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n.*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v.*

City of Pittsburgh, 532 A.2d 12 (Pa. 1987). The actions of Respondent in this case demonstrate reasonable service under Section 1501 of the Public Utility Code. 66 Pa.C.S. § 1501.

It is Complainant's burden to establish that Respondent violated the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. §§ 332(a), 701. Mr. Garner filed his Complaint based on the belief that because his home was heated by electric-powered space heaters during the winter of 2022, he was being charged for gas that he did not consume and that PGW failed to provide reasonable service relating to meter testing. 66 Pa.C.S. § 1501.

In the absence of sufficient evidence in the record supporting any of his claims, I must find that Complainant failed to establish his burden that Respondent violated any laws in connection with billing or unreasonable service. Accordingly, for the reasons stated above, Complainant's Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter within its regulations and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990).
4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

5. The offense complained of must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains with the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also*, *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is the amount of evidence that a reasonable mind might accept as adequate to support a conclusion. 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. Co. 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. 1961).

9. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence. *Mid-Atl. Power Supply Assoc. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *Pa. Bureau of Corrs. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

10. Utility companies are required to provide reasonable service. 66 Pa.C.S. § 1501.

11. Respondent provided reasonable service consistent with Section 1501 of Title 66 of the Public Utility Code. 66 Pa.C.S. § 1501.

12. Complainant has failed to satisfy his burden to demonstrate that Respondent has violated the Public Utility Code, a Commission regulation or Commission order. 66 Pa.C.S. §§ 332(a), 701.

ORDER

THEREFORE,

IT IS ORDERED:

1. Philadelphia Gas Works' Exhibit 6 is entered into the record.
2. That the Formal Complaint filed by Bryan Garner at Bryan Garner v. Philadelphia Gas Works, docket number F-2022-3036883, is hereby denied.
3. That this matter is marked closed.

Date: September 5, 2023

_____/s/
Arlene Ashton
Administrative Law Judge