

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nathaniel Lewis	:	
	:	
v.	:	F-2023-3039722
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s Formal Complaint because the Complainant failed to meet his burden of proving that there were incorrect charges on his bills.

HISTORY OF THE PROCEEDING

On April 4, 2023, Nathaniel Lewis (Complainant or Mr. Lewis) 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 there were incorrect charges on his bills.

On May 2, 2023¹, Respondent filed an Answer denying the material allegations of the Complaint.

¹ The Formal Complaint was served on the Respondent by the Secretary's Bureau on April 7, 2023.

On May 5, 2023, an Initial Telephonic Hearing Notice was issued scheduling the matter for an initial hearing on June 21, 2023 at 10:00 a.m. and assigning the matter to me.

On June 5, 2023, I issued a Prehearing Order which indicated the procedures for the hearing and other matters.

The hearing proceeded as scheduled on June 21, 2023. Complainant participated *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Antonetti, Customer Review Officer. Respondent offered five exhibits, which were all entered into the record.

The hearing resulted in a 45-page transcript. The record closed on August 2, 2023, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Nathaniel Lewis, who resides at 6158 North 17th Street, Philadelphia, Pennsylvania 19141 (Service Address). Tr. 8.
2. The Respondent is Philadelphia Gas Works.
3. The meter readings from the Service Address for the time period January 2022 through August 2022 were as follows:

Meter Reading Date	Meter Reading
January 19, 2022	4041
February 16, 2022	4277
March 18, 2022	4439
April 19, 2022	4544
May 17, 2022	4595
June 16, 2022	4617

Meter Reading Date	Meter Reading
July 18, 2022	4638
August 16, 2022	4655

Tr. 31-37; PGW Exh. 2.

4. The meter at the Service Address was removed by PGW on November 9, 2022 and sent for testing. Tr. 38-39; PGW Exh. 3.

5. On December 2, 2022, the meter from the Service Address was tested by PGW and the results were 98.9% at Open 100%, and 98.6% at Check 20% with an accuracy of -1.4%. Tr. 39; PGW Exh. 3.

6. The meter readings from January 2022 to August 2022 are based on actual readings. PGW Exh. 1.

7. The Complainant sent a check for payment on his account with PGW dated January 7, 2022 in the amount of \$241.29. Tr. 28-29; PGW Exh. 4.

8. PGW credited the January 7, 2022 payment to the Complainant's account on February 2, 2022. Tr. 29; PGW Exh. 1.

9. PGW did not receive any other payments for \$241.29 from the Complainant for his account. Tr. 29-30; PGW Exh. 1.

10. The Complainant did not present PGW with any banking records or cancelled checks to establish that he made another payment to his account in the amount of \$241.29. Tr. 29-30.

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 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. Unemployment 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. 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).

Billing Dispute

The Complainant is disputing the bills from January 2022 as being too high. Mr. Lewis indicated that he records his meter readings on a daily basis. He questioned whether the meter was working properly.

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) (*Bennet*), 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.” *Bennet*, at 6; *See also Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011).

The Complainant testified that the meter readings at the Service Address were incorrect. He indicated that he noticed the issue in January 2022. However, Mr. Lewis did not provide any evidence beyond his testimony to support his claims. “Mere bald assertions ... do not constitute evidence.” *Mid-Atl. 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'n's of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

PGW presented testimony and evidence that the meter at the Service Address was working correctly during the time period at issue. The meter readings from the Service Address for the time period January 2022 through August 2022 were as follows:

Meter Reading Date	Meter Reading
January 19, 2022	4041
February 16, 2022	4277
March 18, 2022	4439
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May 17, 2022	4595
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August 16, 2022	4655

Tr. 31-37; PGW Exh. 2. The meter at the Service Address was removed by PGW on November 9, 2022 and sent for testing. Tr. 38-39; PGW Exh. 3. On December 2, 2022, the meter from the Service Address was tested by PGW and the results were 98.9% at Open 100%, and 98.6% at Check 20% with an accuracy of -1.4%. Tr. 39; PGW Exh. 3. The bills from January 2022 to August 2022 were based on actual readings. PGW Exh. 1.

The Complainant did not present any evidence besides his own testimony that his bills were too high. PGW sent a technician to the Service Address in November 2022 to investigate the Complainant's high bill dispute. At that time, the meter was removed and tested

and found to be within Commission's allowances for gas meters.² As such, the Complainant has not met his burden of proving that the charges on his bills were incorrect, and the Complainant must be dismissed.

Payment to Account

The Complainant also contends that PGW failed to properly credit his account with a payment in January 2022. Mr. Lewis alleged that he sent two checks for the same amount to PGW and that they were not properly credited to his account.

However, according to PGW's records, the Complainant sent a check for payment on his account dated January 7, 2022 in the amount of \$241.29. Tr. 28-29; PGW Exh. 4. PGW credited the January 7, 2022 payment to the Complainant's account on February 2, 2022. Tr. 29; PGW Exh. 1. PGW did not receive any other payments for \$241.29 from the Complainant for his account. Tr. 29-30; PGW Exh. 1. Moreover, the Complainant did not present PGW with any banking records or cancelled checks to establish that he made another payment to his account in the amount of \$241.29. Tr. 29-30. Mr. Lewis also did not present any banking records at the hearing in this matter to establish that he made a second payment to PGW that was not credited to his account. As such, the Complainant has not established that PGW failed to properly credit his account with all the payments he made, and the Complaint must be dismissed.

² (f) *Meter test on request of customer.* Meter tests, if requested by a customer, shall conform with all of the following:

- (1) If a customer requests, in writing, a test of the accuracy of the meter through which gas service is supplied and the meter is not due for periodic test, the public utility shall notify the customer of the conditions under which the test will be made by the utility or by a referee. If the customer then requests the utility to proceed with the test and remits an amount equal to the scheduled cost of a referee test, the utility shall make the test promptly. If, when tested, the meter is found to be more than 2.0% fast or slow, the testing fee shall be promptly refunded to the customer.

52 Pa. Code § 59.21(f) (1). The Complainant's meter from the Service Address tested at -1.4%. PGW Exh. 3

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 stated that it will consider the following factors in high bill cases: 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. “[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).

6. “Mere bald assertions ... do not constitute evidence.” *Mid-Atl. 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'n's of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

7. The Complainant did not meet his burden of establishing that PGW violated the Public Utility Code, Commission regulations or a Commission Order regarding incorrect charges on his account. 66 Pa.C.S. § 332(a).

8. The Complainant did not meet his burden of proving that there were any payments that were not properly credited to his account with PGW. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Nathaniel Lewis at Nathaniel Lewis v. Philadelphia Gas Works at Docket No. F-2023-3039722 is denied and dismissed.

2. That Docket No. F-2023-3039722 be marked closed.

Date: October 31, 2023

_____/s/
Marta Guhl
Administrative Law Judge