

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bashir Price	:	
	:	
v.	:	F-2023-3040449
	:	
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 establish that there were incorrect charges on the bill.

HISTORY OF THE PROCEEDING

On May 1, 2023, Bashir Price (Complainant or Mr. Price) 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 the bill.¹

On May 26, 2023², Respondent filed an Answer denying the material allegations of the Complaint.

¹ This Complaint is a timely appeal from a Bureau of Consumer Services determination at BCS No. 3893324.

² The Formal Complaint was served on the Respondent by the Secretary's Bureau on May 5, 2023.

By Telephonic Hearing Notice dated June 6, 2023, an initial hearing was scheduled for July 12, 2023, at 10:00 a.m., and the matter was assigned to me.

On June 29, 2023, a Rescheduled Telephonic Hearing Notice was issued and the matter was rescheduled for August 2, 2023 at 10:00 a.m.³

The hearing proceeded as scheduled on August 2, 2023. The Complainant appeared *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Antonetti, a Customer Review Officer. Respondent offered five exhibits, which were all entered into the record.

The hearing resulted in a 30-page transcript. The record closed on August 30, 2023, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Bashir Price, who resides at 4217 West Girard Avenue, Apartment 2, Philadelphia, Pennsylvania 19104 (Service Address). Tr. 8.
2. The Respondent is Philadelphia Gas Works.
3. The Service Address is located in a three-story home divided into apartments. Tr. 11.
4. The Complainant's apartment is on the second floor. Tr. 11.
5. The Complainant's apartment has two bedrooms and one bathroom. Tr. 11.

³ The matter was rescheduled due to an attorney scheduling conflict.

6. The Complainant lives alone at the Service Address. Tr. 11.
7. The Service Address has a gas stove, water heater and house heater. Tr. 12.
8. On December 31, 2022, there was a call to PGW from a neighbor regarding a gas leak at the building where the Service Address is located, which was investigated. Tr. 9-10, 27.
9. On January 9, 2023, the Complainant filed a dispute with PGW regarding his current bill. Tr. 21-22; PGW Exh. 2.
10. The Complainant was told he could request a meter test for \$10.00 but did not do so. Tr. 21-22; PGW Exhs. 2 & 3.
11. On February 8, 2023, PGW sent the Complainant a letter regarding his dispute which indicated that his bill was correct and based on actual meter readings. Tr. 22-23; PGW Exh. 3.
12. The letter also indicated again that the Complainant could request a meter test for \$10.00 but the Complainant did not do so. Tr. 23-24; PGW Exh. 3.
13. On June 5, 2023, PGW, based on the Complainant's Formal Complaint, sent a technician to the Service Address to exchange the meter. Tr. 25; PGW Exh. 5.
14. The meter was tested on June 15, 2023 and found to be 100% accurate at Open 100% and 100% accurate at Check 20%. Tr. 26; PGW Exh. 5.

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, 602 (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).

The Complainant is disputing the bills from January 2023 as being too high. 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 he noticed that his bill was high in January 2023. However, Mr. Price 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. Bureau 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).

The Complainant testified that the Service Address is located in a three-story home divided into apartments. Tr. 11. The Complainant's apartment is on the second floor. Tr. 11. The Complainant's apartment has two bedrooms and one bathroom. Tr. 11. The Complainant lives alone at the Service Address. Tr. 11. The Service Address has a gas stove, water heater and house heater. Tr. 12. The Complainant testified and PGW confirmed that on December 31, 2022, there was a call from a neighbor to PGW regarding a gas leak at the building where the Service Address is located, which was investigated. Tr. 9-10, 27.

PGW presented the testimony of Ms. Antonetti, a customer review officer. Ms. Antonetti testified that on January 9, 2023, the Complainant filed a dispute with PGW regarding his current bill. Tr. 21-22; PGW Exh. 2. The Complainant was told he could request a meter test for \$10.00 but did not do so. Tr. 21-22; PGW Exhs. 2 & 3. She also indicated that on February 8, 2023, PGW sent the Complainant a letter regarding his dispute which indicated that his bill was correct and based on actual meter readings. Tr. 22-23; PGW Exh. 3. The letter also stated again that the Complainant could request a meter test for \$10.00 but the Complainant did not do so. Tr. 23-24; PGW Exh. 3. Further, on June 5, 2023, PGW, based on the Complainant's Formal Complaint, sent a technician to the Service Address to exchange the meter. Tr. 25; PGW Exh. 5. The meter was tested on June 15, 2023 and found to be 100% accurate at Open 100% and 100% accurate at Check 20%. Tr. 26; PGW Exh. 5.

The Complainant did not present any evidence besides his own testimony that his bill in January was too high. While the Complainant seems to suggest that a gas leak was the issue, there is nothing in the record to support that contention. PGW noted that it did investigate a gas leak called in by a neighbor on December 31, 2022, but this does not appear to have anything to do with the Service Address. Further, PGW sent a technician to the Service Address in June 2023 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.⁴ In fact, the Complainant's meter from the Service Address tested at 100% accuracy. PGW Exh. 5. Moreover, the Complainant's bills were based on actual meter readings. The Complainant's testimony alone is not enough to meet the burden of proof. 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.

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: 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

⁴ (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).

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-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); *Pa. Bureau 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).

7. The Complainant did not meet his burden of proving that there were incorrect charges on his bills.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Bashir Price at Bashir Price vs. Philadelphia Gas Works at Docket No. F-2023-3040449 is denied and dismissed and;

2. That Docket No. F-2023-3040449 be marked closed.

Date: November 21, 2023

_____/s/
Marta Guhl
Administrative Law Judge