

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eliot Present	:	
	:	
v.	:	F-2023-3040472
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Formal Complaint of Eliot Present because he failed to satisfy his burden of proving that Philadelphia Gas Works violated its Commission-approved tariff, the Public Utility Code, or a Commission Regulation or Order.

**HISTORY OF THE PROCEEDING**

On May 3, 2023, Eliot Present (Mr. Present or Complainant) filed a Formal Complaint (Complaint)<sup>1</sup> against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Present alleged that the Weather Normalization Adjustment on his bills was incorrect for the months of February and March of 2023. Mr. Present requested that the Weather Normalization Adjustment charges be removed.

---

<sup>1</sup> This Complaint is a timely appeal from a Bureau of Consumer Services determination at BCS # 3890299.

On May 30, 2023, PGW filed an Answer to the Complaint. In its Answer, PGW admitted in part, and denied in part, various material allegations of the Complaint. PGW admitted that it provides residential gas heat and domestic appliances service to the Complainant. PGW denied that the Weather Normalization Adjustment on the Complainant's bills was incorrect. PGW requested that the Complaint be dismissed.

By Hearing Notice dated June 6, 2023, an Initial Call-In Telephonic Hearing was scheduled for August 8, 2023, and the matter was assigned to me.

A Prehearing Order was issued on June 27, 2023, advising the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to the proceeding.

On August 8, 2023, the hearing convened as scheduled. The Complainant appeared *pro se* and testified on his own behalf. The Complainant did not present any exhibits at the hearing. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented the testimony of Jessica Glace, the Manager of the Customer Review Unit at PGW. PGW offered two exhibits, which were admitted into the record.

The record closed on September 7, 2023, upon the filing of the transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Eliot Present.
2. The Respondent is Philadelphia Gas Works, a utility under the jurisdiction of the Pennsylvania Public Utility Commission.
3. The Complainant resides and receives gas service from PGW at 474 Aurania Street, Philadelphia, Pennsylvania (Service Address). Tr. 6.

4. The Complainant's February 2023 bill included a Weather Normalization Adjustment of \$52.59 for service from December 29, 2022 to January 30, 2023. Tr. 22-23; PGW Exh. 1.

5. The Complainant's March 2023 bill included a Weather Normalization Adjustment of \$31.72 for service from January 30, 2023 to February 27, 2023. Tr. 27-28; PGW Exh. 2.

6. The Complainant's Weather Normalization Adjustments for February and March of 2023 were calculated in accordance with the formulas set forth in PGW's Gas Service Tariff – Pa P.U.C. No. 2. Tr. 25, 46.

### DISCUSSION

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). 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 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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 complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant 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); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 1984).

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 on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlt. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlt. 1982).

Finally, a Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlt. 1981). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlt. 1996).

In this matter, Mr. Present alleged that the Weather Normalization Adjustment on his bills was incorrect for the months of February and March of 2023. However, Mr. Present did not present any evidence at the hearing in support of his Complaint other than his own statements that he disagrees with the Weather Normalization Adjustment he is being charged. Tr. 9-13. To the contrary, through its witness and exhibits, PGW provided a detailed explanation demonstrating that the Complainant's Weather Normalization Adjustments for February and March of 2023 were calculated in accordance with the formulas set forth in PGW's Gas Service Tariff – Pa P.U.C. No. 2. Tr. 22-28; PGW Exh. 1 and 2.

The Complainant's opinion alone is insufficient to overcome the *prima facie* reasonableness of the Commission-approved tariff. *Kirby v. PPL Elec. Utils. Corp.*, Docket No.

C-20066297 (Final Order entered Nov. 16, 2006). Thus, I find the Complainant failed to satisfy his burden of proving that PGW violated its tariff, the Public Utility Code, or a Commission Regulation or Order. Accordingly, the Complaint will be denied.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law, and is binding on the utility and the customer. 66 Pa.C.S. § 316; *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).
4. Personal opinions or perceptions do not constitute substantial evidence sufficient to permit a complainant to sustain his burden of proof. *Kirby v. PPL Elec. Utils. Corp.*, Docket No. C-20066297 (Final Order entered Nov. 16, 2006).
5. The Complainant has failed to satisfy his burden of proving that PGW violated its tariff, the Public Utility Code, or a Commission Regulation or Order. 66 Pa.C.S. § 332(a), 701.

