

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held December 7, 2023

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Bryan Garner

F-2022-3036883

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Bryan E. Garner (Mr. Garner or Complainant) filed on September 13, 2023, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Arlene Ashton issued September 5, 2023, in the above-captioned proceeding. On September 25, 2023, Philadelphia Gas Works (PGW or Company) filed its Replies to Exceptions. For the reasons set forth herein, we shall deny the Complainant's Exceptions, adopt the ALJ's Initial Decision, and dismiss the Complaint, consistent with this Opinion and Order.

I. History of the Proceeding

On October 28, 2022, Mr. Garner filed a Formal Complaint (Complaint) with the Commission against PGW.¹ In the Complaint, Mr. Garner alleged: that PGW was threatening to shut off his service; he would like a payment agreement; there are incorrect charges on his bill; and he is experiencing a reliability, safety, or quality problem with his utility usage. Complaint at 2. Mr. Garner also indicated that he had other issues arising out of a heater installation at his residence. *Id.* As for relief, the Complainant requested, *inter alia*, that PGW reduce his bill, conduct an inspection of PGW's system and equipment at the Service Address, and replace the meter. *Id.* at 3.

On December 13, 2022, PGW filed its Answer.² PGW's Answer denied all material allegations of the Complaint and requested that the Commission dismiss the Complaint. Answer at 1-2.

By Hearing Notice dated December 19, 2022, the Commission scheduled an Initial Call-In Telephonic Hearing to be held in this matter on February 24, 2023, at 10:00 a.m., and assigned ALJ Ashton as the presiding officer. On January 6, 2023, a Prehearing Order was issued by ALJ Ashton setting forth, *inter alia*, hearing information and the rules that would govern the proceeding.

On February 24, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*. I.D. at 2. Graciela Christlieb, Esquire, appeared on behalf

¹ This is a timely appeal from the Bureau of Consumer Services (BCS) determination at BCS No. 3859458 issued on October 7, 2022. An appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

² Since a copy of the Complaint only was served upon PGW on November 21, 2022, we will consider PGW's Answer as being timely filed in accordance with the Commission's Regulations. *See*, 52 Pa. Code § 5.61.

of PGW. *Id.* At the beginning of the hearing, the Complainant requested a continuance in order to secure counsel to represent him in this proceeding. *Id.* citing Tr. at 19. PGW objected to the Complainant's request for a continuance. *Id.* ALJ Ashton denied PGW's objection; granted the Complainant's motion; and continued the hearing. *Id.* An Interim Order was issued on February 24, 2023, memorializing the ruling on the motion and the granting of the continuance.

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

On March 24, 2023, the hearing reconvened, as scheduled. The Complainant appeared *pro se* and Attorney Christlieb appeared on behalf of PGW. The Complainant identified three exhibits that were admitted into the record, and PGW identified five exhibits that were admitted into the record. I.D. at 3.

The record closed on June 8, 2023. I.D. at 3.

ALJ Ashton's Initial Decision was issued on September 5, 2023. Exceptions and Replies to Exceptions were filed on September 13, 2023, and September 25, 2023, respectively.

II. Discussion

A. Legal Standards

1. Burden of Proof

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that PGW is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

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 PGW. If the evidence presented by PGW is of equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to rebut that of PGW. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

2. High Bill Complaints

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 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.

In *Nehemiah B. Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011) (*Thomas*), the Commission explained the burden of proof set forth in *Waldron* as follows:

[T]he *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 at 5 (emphasis in original).

3. Provision of Safe, Adequate, and Reasonable Gas Service

A public utility has a duty to maintain safe, adequate, and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See*, 66 Pa. C.S. § 1501. More specifically, Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, in pertinent part, as follows:

§ 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.

The term “service” is defined broadly under Section 102 of the Code, in relevant part, as follows:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities...in

the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them...

66 Pa. C.S. § 102.

B. ALJ's Recommendation

ALJ Ashton made eighteen (18) Findings of Fact and reached twelve (12) Conclusions of Law. I.D. at 3-5; 13-15. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by the Opinion and Order.

In her Initial Decision, ALJ Ashton addressed the following two issues raised by the Complainant: a high bill dispute and unreasonable customer service.

At the outset, ALJ Ashton referenced the burden of proof for high bill complaints explained in *Waldron* as discussed, *supra*. I.D. at 7-8. She noted that the Complainant testified that his PGW bills for the “winter months” of 2021-2022 were abnormally high when compared with the same time frame from winters previous and following the time frame in question. *Id.* at 8. The ALJ indicated that Mr. Garner testified that he only heated three rooms in his home, in which he relied solely on electric space heaters and did not use his gas heater. *Id.* The Initial Decision also mentioned that Mr. Garner asserted that he had consistently paid his bills from PGW and that he only contested the gas bills for the months in question when he did not use his gas heater. *Id.*

In the Initial Decision, ALJ Ashton pointed out that PGW asserted that the Complainant's bills are accurate and based on actual meter readings. I.D. at 7. The ALJ stated that PGW's Customer Review Officer, Patricia Bernard, testified that Mr. Garner's

gas meter was removed and tested for accuracy by the Company, which revealed that the meter functioned within accuracy allowances permitted under Commission regulations. *Id.* at 9. Additionally, PGW introduced the Complainant's billing and gas use at the Service Address for the months November 2018 through March 2023 in PGW Exhibit 6. *Id.*

ALJ Ashton noted that the charts in PGW Exhibit 6 demonstrated 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. *I.D.* at 10. The ALJ found the Complainant's testimony, with the support of his witness, that he relied on electric powered space heaters to heat his home during that time period showing highly elevated billing and usage between 2021 and 2022, to be credible. *Id.* The ALJ concluded that while the Complainant did not provide sufficient evidence to support a finding of a *prima facie* case of high billing for the month of November 2021, the evidence presented a *prima facie* case of high billing for December 2021 and January through March 2022. *Id.*

The ALJ determined that PGW's testimony and documentary evidence, showing that the meter installed at Mr. Garner's home in September 2021 was tested and functioning within regulatory limits, was credible and rebutted the Complainant's *prima facie* case. *I.D.* at 10.

According to the ALJ, the burden of persuasion then shifted back to the Complainant to prove that the high billing variances were caused by PGW. *I.D.* at 10. ALJ Ashton found that Mr. Garner 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. *Id.* at 11. In fact, the ALJ noted that the Complainant testified that he conducted an informal "test" in March 2023 and found that the meter appeared to function properly but did not provide an explanation as to how the

alleged malfunction was fixed. *Id.* According to the ALJ, the clear evidence and testimony presented by PGW rebutted Mr. Garner's argument that his meter was faulty and Mr. Garner did not present any evidence or testimony demonstrating this his home heating system did not function properly or that his system did not use the quantity of gas billed for by PGW. *Id.* Without such evidence, the ALJ held that the high billing and usage cannot be attributable to any action or inaction by PGW. *Id.*

Therefore, the ALJ concluded that the Complainant failed to carry his burden of persuasion that the high billing was caused by PGW and thus, his burden of proof regarding the high billing claim. *Id.*

Next, ALJ Ashton considered the Complainant's unreasonable customer service claim. At the hearing, the ALJ noted, Mr. Garner testified that he requested a meter test and was ready and available to observe the meter test scheduled for January 30, 2023, at 9:15 a.m. I.D. at 12. ALJ Ashton recounts that the Complainant testified that he was unable to do so through no fault of his own. *Id.* The Initial Decision states that PGW's witness Mr. Bernard testified that the Company voluntarily agreed to test the allegedly defective meter, waive the normal testing fee, and allow Mr. Garner to observe the testing. *Id.*

ALJ Ashton reasoned that the testimony the Parties provided during the hearing proved to be consistent as to the events of the morning of the test. I.D. at 12. The ALJ did not find any evidence that PGW acted in bad faith and, to the contrary, found that PGW's willingness to conduct the test in Mr. Garner's presence and waive the normal testing fee demonstrated PGW's flexibility and efforts to accommodate the Complainant. *Id.* ALJ Ashton concluded that Mr. Garner failed to provide sufficient evidence to prove PGW provided unreasonable service. *Id.*

Due to the absence of sufficient evidence to support Mr. Garner's claims, ALJ Ashton dismissed his Complaint. I.D. at 13.

C. Exceptions³ and Replies

In his Exceptions, Mr. Garner contends that ALJ Ashton's Initial Decision was not "just." Exc. at 1. Mr. Garner explains that when he went to PGW's headquarters for his scheduled meter testing, he failed to make contact with the appropriate personnel because he had never met such personnel and only had "limited access" to PGW's lobby. *Id.* Although the Initial Decision mentioned that Mr. Garner left PGW's lobby to make a phone call, he claims that he was asked to do so by a PGW employee. *Id.* Mr. Garner further alleges that he arrived at PGW's headquarters for his scheduled 9:15 a.m. appointment at 8:40 a.m. and left for work around 10:20 a.m. *Id.* at 2.

Next, the Complainant excepts to the Initial Decision's finding that he did not provide sufficient evidence of his high bill claim. Exc. at 2. Mr. Garner alleges that PGW's equipment, specifically the meter, was inaccurate and malfunctioned which led to his excessive rates. *Id.* He contends that he was given a new meter in March 2023 and has had no issues with high usage that he did with the original meter. *Id.*

In conclusion, Mr. Garner states his willingness to negotiate a settlement with PGW but that he would not agree to the Company's original offer. Exc. at 3. Mr. Garner believes that as a customer for thirty (30) years with good payment history, PGW should work with him on a fair resolution of his excessive bills. *Id.*

³ The Exceptions filed by Mr. Garner, appearing *pro se*, do not strictly conform to our Rules of Practice. 52 Pa. Code §§ 5.533; 5.535. We shall, however, consider the Complainant's Exceptions within our discretion to liberally construe pleadings to secure a just, speedy, and inexpensive determination in this proceeding. *See*, 52 Pa. Code § 1.2(a).

In its Reply Exceptions, PGW argues that the Complainant failed to identify any error in law or fact that would support reversal of ALJ Ashton's finding regarding the quality of service provided by PGW. R. Exc. at 2. PGW submits that the record clearly demonstrates that PGW did its best to accommodate the Complainant regarding the testing of his meter. *Id.* at 3. PGW reiterates that the appointment to test the meter was at 9:15 a.m. and when the Complainant had not been found, PGW reached out to the Complainant to reschedule the appointment for 9:30 a.m. *Id.* PGW states that whether the first appointment or second appointment was kept by the Complainant, the Company was unsure as to how he would have observed the testing if he had to leave by 9:57 a.m. for work. *Id.*

Next, PGW claims that the Complainant failed to identify any error in law or fact that would support reversal of ALJ Ashton's finding that Mr. Garner's bills issued in December 2021 and January through March 2022 were inaccurate or that the meter installed in his home malfunctioned. R. Exc. at 3. PGW points out that the Complainant's own evidence fails to support his claim that he did not use gas during the 2021-2022 heating season and instead relied on electric heaters. *Id.* Complainant Exhibit 2, a PECO account activity summary, shows that the Complainant used less electricity than in those same months in 2022 through 2023 and less electricity than he used in March 2021. *Id.* PGW states that according to the PECO account activity summary, the only month during the 2021 through 2022 heating season where Mr. Garner used more electricity than he did the subsequent season was during December and that the difference was slight. *Id.* at 4.

In conclusion, PGW requests the Commission deny the Complainant's Exceptions and adopt ALJ Ashton's Initial Decision. R. Exc. at 4.

III. Disposition

Before addressing the Exceptions, we note that any issue, or argument of contention not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth 1984). Therefore, any issue that we do not specifically address or delineate in this decision shall be deemed to have been duly considered and denied without further discussion.

On consideration of the record evidence in this proceeding, we shall deny the Complainant's Exceptions and adopt the Initial Decision of ALJ Ashton, consistent with the following discussion.

A. High Bill Assertion

In order to establish a *prima facie case* under *Waldron*, the Complainant must show the disputed bill was abnormally high when compared to prior usage patterns and that his or her pattern of usage has not changed or must provide other relevant evidence showing that the disputed bill is unreasonably high. *See, Thomas*. Here, Mr. Garner asserts that his gas bills for the 2021-2022 heating season were high and that during this time period, he relied on electric space heaters to heat his home. PGW counters that the meter at the Complainant's Service Address was tested within the range of accuracy permitted under the Commission's regulations. *See, PGW Exh. No. 5* (reflecting a meter accuracy of 98.9%).⁴

⁴ Under the Commission's regulations, this test result is within an acceptable 2.0% range of accuracy. 52 Pa. Code § 57.20(c).

We note that the Commission has stated that meter accuracy is not the sole determinant in resolving a high bill dispute. Rather “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” are all factors that may be considered by the presiding officer. *See, Waldron*, cited above.

Upon review of the Complainant’s record evidence, we agree with the ALJ that there is an apparent increase in billed CCF⁵ at the Service Address but disagree that it begins in December 2021. Rather, we believe the increase in CCF, when compared to the previous year, begins in January 2022 and continues through March 2022. *See, PGW Exh. No. 6*. The Complainant’s usage history from November through March beginning in 2018 through 2023 is shown below:

Complainant’s CCF Usage					
	2018-2019	2019-2020	2020-2021	2021-2022	2022-2023
November	24	17	12	16	16
December	196	29	180	115	60
January	503	142	132	417	195
February	438	185	102	426	213
March	260	101	149	184	35 ⁶

PGW Exh. No. 6.

⁵ CCF stands for centum cubic feet and is the unit of measure for natural gas.

⁶ The Complainant testified that he did not use his heater in March of 2023. Tr. at 113.

Based upon the chart above, the Complainant did, in fact, experience high CCF usage during January to March 2022 but he experienced even higher usage during the 2018-2019 heating season. This suggests that the Service Address has the potential for energy utilization that was billed for January to March 2022. Note must also be taken of the numbers of appliances in use. The appliances at the Service Address utilizing gas include the heating system, water heater, stove, and dryer. Tr. at 58.

Moreover, the Complainant testified that a new heating system was installed at the Service Address in August 2021 but that it needed further attention and the Complainant's plan was to get it serviced closer to the beginning of the heating season of that same year. Tr. at 43. Mr. Garner submitted no evidence to suggest that PGW would be responsible for his malfunctioning heating system. Mr. Garner submitted no evidence showing that his new heating system had been serviced and was functioning prior to the start of the 2021 heating season. Furthermore, the installation of the new heating system coincided with the high bills/high usage Mr. Garner experienced in the following 2021-2022 heating season.

As mentioned above, Mr. Garner stated that he had been heating his house with electric powered space heaters and introduced his PECO account summary into evidence. Tr. at 41. However, upon review of the PECO account summary, it is clear that the Complainant actually used less kWh during November 2021 through February 2022 than he did during November 2022 through February 2023.⁷ One exception being December 2021, when the Complainant used 923 kWh and in December 2022 the Complainant used 892 kWh; however, the difference of thirty-one kWh between the two periods is nominal. This evidence fails to support the Complainant's claim that he was relying solely on electric space heaters to heat his home.

⁷ The PECO account summary offered by the Complainant does not show usage for March 2023 so a comparison of March 2022 to March 2023 cannot be made.

Mr. Garner did not present any other evidence to prove his high bill claim, under the *Waldron* rule. However, in support of its position, PGW established that the meter tested within the accuracy standards prescribed by the Commission's regulations, and the record reflects that the Service Address has the potential for the usage that is being billed. Therefore, consistent with the foregoing discussion and considering the foregoing factors, Mr. Garner has failed to sustain his burden of proof and thus, his high bill claim will be dismissed.

Turning to the Complainant's allegation of unreasonable service, we find that the record evidence demonstrates that PGW investigated and addressed the Complainant's high bill concerns within its internal informal complaint process and during the instant proceeding. *See*, PGW Exh. No. 3. Here, PGW voluntarily waived its meter testing fee and offered to have the Complainant witness the meter testing of the meter from the Service Address. Tr. at 82. The testimony at the hearing, the Exceptions as well as the Replies thereto, illustrate PGW's willingness to accommodate the Complainant in order to alleviate his concern regarding the meter. Tr. at 60; Exc. at 1; R. Exc. at 3. Although PGW allowed Mr. Garner to choose the date convenient for him to witness the meter testing, ultimately, Mr. Garner was unable to witness the testing. *Id.* PGW entered the results of the meter testing into evidence which showed that the meter at the Service Address was functioning within allowances for accuracy permitted under Commission regulations. Tr. at 86; PGW Exh. No. 5. Therefore, we agree with the ALJ that Mr. Garner did not meet his burden of proof regarding unreasonable service by PGW.

Accordingly, on consideration of the record, we conclude that the Complainant failed to establish that he was improperly billed for his gas service, received unreasonable service, or that PGW violated the Code, a Commission Regulation or Order, or a Commission-approved tariff. We find that the ALJ properly weighed the evidence presented and that dismissal of the Complaint was appropriate, consistent with *Waldron*.

Therefore, we shall deny the Complainant's Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order.

IV. Conclusion

Based on the foregoing discussion, we shall deny the Complainant's Exceptions, adopt ALJ Arlene Ashton's Initial Decision, and dismiss the Complaint, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

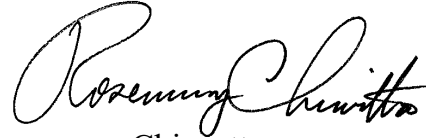
1. That the Exceptions of Bryan E. Garner filed on September 13, 2023, to the Initial Decision of Administrative Law Judge Arlene Ashton issued at Docket No. F-2022-3036883, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Arlene Ashton issued on September 5, 2023, at Docket No. F-2022-3036883 is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint of Bryan E. Garner, filed on October 28, 2022, at this docket, is dismissed, consistent with this Opinion and Order.

4. That the proceeding at Docket No. F-2022-3036883 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, reading "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 7, 2023

ORDER ENTERED: December 7, 2023