

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Luke Stanshine	:	
	:	
v.	:	C-2023-3040796
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision finds that there were incorrect charges on the Complainant’s bill and a partial credit/refund is ordered. However, a fine against Philadelphia Gas Works is not warranted.

HISTORY OF THE PROCEEDING

On May 22, 2023, Luke Stanshine (“the Complainant”) filed a Formal Complaint against Philadelphia Gas Works (“PGW”) with the Pennsylvania Public Utility Commission (“Commission”). On the Complaint form, the Complainant checked the box indicating that there were incorrect charges on his bill. He is questioning why his gas bills were \$500–\$600 per month for a one-bedroom apartment.

PGW filed an Answer on June 13, 2023. In the Answer, PGW stated that the bills issued to the Complainant were correct and that a test of the Complainant’s meter showed that the meter was accurate.

On June 16, 2023, an Initial Call-In Telephone Hearing Notice was issued, setting the hearing for August 24, 2023. A Prehearing Order was issued on June 26, 2023.

The telephonic hearing convened as scheduled on August 24, 2023. Mr. Stanshine represented himself. He presented no exhibits. PGW was represented by Graciela Christlieb, Esq. Testifying on behalf of PGW were Jessica Antonetti, PGW Customer Review Officer, and Alex Tsafos, PGW Field Service Technician. Four PGW exhibits were admitted at the hearing. They are:

- PGW Exhibit 1 - Statement of Account
- PGW Exhibit 2 - PGW letter dated 2/23/2023
- PGW Exhibit 3 - Letter dated 4/28/2023
- PGW Exhibit 4 - Contact for Service

Also, PGW was directed to submit additional evidence regarding the Complainant's account and the meter at issue.

On September 11, 2023, PGW submitted three additional exhibits. They are:

- PGW Exhibit 5 - Updated Record of Account
- PGW Exhibit 6 - Previous tenant Record of Account
- PGW Exhibit 7 - Service Order

On September 15, 2023, an order was issued advising that the Complainant had until October 2, 2023, to provide any response or additional documents. The Complainant did not submit a reply or exhibits.

The record closed on October 3, 2023, one day after the due date for the Complainant's response to PGW Exhibits 5-7. PGW Exhibits 5-7 are admitted herein.

FINDINGS OF FACT

1. The Complainant in this matter is Luke Stanshine.
2. Philadelphia Gas Works is the Respondent in this matter.
3. Complainant resided at 1148 Harrison Street, Apt. 2F, Philadelphia, PA (“service address”).
4. PGW provided gas service at the service address.
5. The service address is a one-bedroom apartment, measuring about 500 feet. Tr. 12-13.
6. The Complainant moved into the service address on November 8, 2022. Tr. 18, 58.
7. Gas appliances at the service address include a stove, a water heater and a house heater. Tr. 13, 22.
8. The service address is on the second floor of a three-level residence and each floor is a separate unit. Tr. 13.
9. In January 2023, upon receiving a large bill from PGW of between \$500 and \$600 dollars, the Complainant contacted PGW. Tr. 14, Tr. 24.
10. On March 22, 2023, a PGW inspector went to the service address in response to the Complainant contacting PGW about a high bill. Tr. 16.
11. Also on March 22, 2023, the PGW technician removed and replaced the meter at the service address. Tr. 15, 59-60.

12. On April 24, 2023, a meter test was conducted on the meter removed from the service address. PGW Exhibit 3.

13. A PGW record states that the meter taken from the service address tested within acceptable levels of accuracy. PGW Exhibit 3.

14. Neither the technician who changed the meter nor the technician who tested the meter testified at the hearing. Tr. 29, 51, 52.

15. PGW Technician Tsafos visited the service address on June 14, 2023, for a trace meter and piping inspection to ascertain whether there was foreign load on the Complainant’s meter. Tr. 44-45.

16. During his inspection, Mr. Tsafos found no leaks in the gas lines. Tr. 53.

17. Usage and charges at the service address during cold weather months in 2021-2023 were as follows:

Previous Tenant Billing Date	Stanshine Billing Date	Degree Days Previous Tenant	Degree Days Stanshine	Previous Tenant Usage Recorded	Stanshine Usage Recorded	Previous Tenant Bill	Stanshine Bill
11/23/2021		356		17		\$43.94	
12/23/2021	12/20/2022	653	779	32	288	\$72.24	\$562.15
1/26/2022	1/21/2023	943	852	50	341	\$106.61	\$672.75
2/25/2022	2/18/2023	694	636	25	195	\$61.63	\$425.75
	3/22/2023		687		183		\$329.37

PGW Exhibits 1 and 5.

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). The complainant must establish his case 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).

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 to the evidence presented by the complainant, the complainant has not satisfied his burden of proof. The complainant would then 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), *aff'd*, 461 A.2d 1234 (Pa. 1983).

In addition, 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. A mere trace of evidence or a suspicion of the existence of a fact is insufficient. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

As a matter of law, to establish a legally sufficient claim, 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. The Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). 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.

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 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.

When a customer alleges incorrect charges, the *Waldron Rule* applies. As the Commission has explained:

In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980), 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 Michigan PSC 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.

Bennett v. Peoples Nat. Gas Co., LLC, Docket No. C-2009-2122979, at 5 (Opinion and Order entered Sept. 23, 2010) (quoting *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98, 100 (1980)).

Commission Regulations provide tolerance standards for recording electricity usage within an error variance of 2.0% or less as follows:

§ 57.20. Watthour Meter Testing

(b) No watthour meter which has an error in registration of more than 2.0% at light load or heavy load may be placed in service or allowed to remain in service without adjustment. If, upon installation, period or other tests, a watthour meter is found to exceed these limits, it shall be adjusted or removed from service.

52 Pa. Code § 57.20(c); *see also Reddinger v. Pa. Elec. Co.*, Docket No. F-2022-3032104 (Opinion and Order entered Feb. 28, 2023).

Also, if, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. In making a determination under this section, the commission need not find that the rate complained of was extortionate or oppressive. 66 Pa.C.S. § 1312(a).

ACCURACY OF BILLS

The Complainant is questioning the accuracy of his bills during the winter of 2022-2023, or the first four or five months that he lived at the service address. Tr. 12. Substantial evidence in this matter weighs toward a finding that the Complainant was overcharged due to a problem with the usage measurements.

During the period in question, the Complainant lived alone in a one-bedroom apartment that is approximately 500 square feet in size. Tr. 51. When the Complainant contacted PGW about his high bills, the company sent out a technician, who removed and changed the meter. The meter was tested and according to the PGW test report, the meter tested within the accuracy range allowed under 52 Pa. Code § 59.21(f)(1). PGW Exhibit 3. However, as the Commission has held, a complainant in a high bill case is not limited to proof of the accuracy of the meter test alone. *Norman v Phila. Gas Works*, Docket No. C-2018-2640719 (Opinion and Order entered Oct. 7, 2021).

The PGW employee testing the meter that was removed from the Complainant’s apartment and conducting the accuracy test on the meter did not testify at the hearing. As illustrated in Finding of Fact 17, the Complainant’s measured usage and charges were significantly higher than the previous tenant in the same apartment during the same months.

As a glaring example of the difference in the charges are the following measurements:

Previous Tenant Billing Date	Stanshine Billing Date	Degree Days Previous Tenant	Degree Days Stanshine	Previous Tenant Usage Recorded	Stanshine Usage Recorded	Previous Tenant Bill	Stanshine Bill
1/26/2022	1/21/2023	943	852	50	341	\$106.61	\$672.75

In January, the degree days were higher, i.e., it was colder, for the previous tenant and yet the measured usage for the Complainant in January was over six times higher. This resulted in the Complainant receiving a bill that was more than six times higher than that of the previous tenant.

The measurements in Finding of Fact 17 also show similar questionable comparative usage readings in December and February of 2022 and 2023. In the same apartment with the same appliances, PGW measured the Complainant’s usage at over six times that of the previous tenant. There is nothing in the record from which one can infer that the Complainant used more gas than the previous tenant. Also, a PGW technician was sent to the property to

inspect for leaks and found none, further weighing in favor of finding that there was an error in the usage measurements.¹ Tr. 53. This technician also traced and opened the fuel line for each gas appliance at the service address and found that no repairs were needed. Tr. 53, 55.

Substantial evidence supports a finding that the Complainant's PGW bills were incorrect during the period in question, which is unreasonable service.

The Complainant's usage was over measured by up to six times the usage of the previous tenant. That overcharge is unreasonable and unjust. *See* 66 Pa.C.S. § 1312(a). As a reasonable remedy, PGW will be ordered to credit the Complainant for 5/6 of the amount he was charged from November 8, 2022, when he became a customer of PGW at the service address, until March 22, 2023, when PGW changed the meter at the service address. Therefore, PGW will be ordered to credit the Complainant \$1,658.35.²

PENALTIES

A public utility that violates the Code or a Commission Order or Regulation may be subjected to a civil penalty of up to \$1,000 per violation for every day of that utility's continuing offense. *See*, 66 Pa.C.S. § 3301(a)–(b). The Commission's policy statement at 52 Pa. Code § 69.1201 establishes specific factors and standards the Commission will consider in evaluating litigated cases involving violations and in determining whether a fine is appropriate.

The factors and standards that will be considered by the Commission include the following:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty.**

¹ That PGW sent a technician to check the line for leaks and foreign load after the meter was replaced also suggests that the company suspected that there was something wrong or off with the gas usage measurements. Tr. 44-45, PGW Exhibit 7.

² This amount was determined by adding the amount of the bills received by the Complainant from December 2022 through March of 2023 and multiplying by 5/6ths. *See* FOF 17.

When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa. Code § 69.1201. A penalty is not warranted here.

Although substantial evidence supports a finding that the Complainant's usage was incorrectly measured and the Complainant was incorrectly charged, PGW did not engage in willful fraud or intentionally overcharge the Complainant, and the company responded to the Complainant's inquiry by sending technicians to the property. Additionally, only one customer was affected and there is no evidence that the company acted in bad faith. Further, PGW will be required to credit the Complainant's account with the overpayment, plus interest, and therefore a penalty in addition would be excessive under the circumstances.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant has the burden of proof. 66 Pa.C.S. § 332(a).
3. The Pennsylvania Public Utility Code requires each public utility to provide reasonable service. 66 Pa.C.S. § 1501.
4. While the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion and any other relevant facts or circumstances that are brought to light during the complaint proceeding may be considered. *Bennett v. Peoples Nat. Gas Co., LLC*, Docket No. C-2009-2122979, at 5 (Opinion and Order entered Sept. 23, 2010) (quoting *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98, 100 (1980)).
5. The record contains substantial evidence to establish that the PGW bills of the Complainant were incorrect for the period in question. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).
6. Although the PGW bills issued to the Complainant were incorrect, PGW did not engage in fraudulent, willful, or deliberate acts and therefore a fine is not warranted under the factors in 52 Pa. Code § 69.1201.

