

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mujaffa Furbert	:	
	:	
v.	:	C-2023-3040010
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s Formal Complaint because he failed to sustain his burden of demonstrating that Philadelphia Gas Works charged him incorrectly for service. Additionally, this decision denies the Complainant’s Formal Complaint because he failed to sustain his burden of demonstrating that he should receive a second Commission-issued payment arrangement or an extension of his previous Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDING**

On April 18, 2023, Mujaffa Furbert (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “I would like a payment agreement,” “[i]ncorrect charges are on my bill,” and “[o]ther.” In an attached letter, the Complainant requested an investigation to determine why his PGW bill is so high. The Complainant also requested an affordable payment budget plan.

On May 8, 2023, the Respondent filed an Answer denying that there are incorrect charges on the bill for gas service at 122 W. Upsal Street, Philadelphia, PA (service address). The Respondent further answered that the property is equipped with an automatic meter reading device and the bills are based on actual meter readings. Lastly, the Respondent answered that the disputed billing reflects actual usage recorded on the meter.

By Initial Telephonic Hearing Notice dated May 9, 2023, an initial call-in telephonic hearing was scheduled for June 28, 2023 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on May 10, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

By Interim Order dated June 27, 2023, I granted the Respondent's Motion for Continuance of the June 28, 2023 hearing.

By Cancelled/Rescheduled Initial Telephonic Hearing Notice dated June 27, 2023, the initial call-in telephonic hearing was rescheduled for August 25, 2023 at 10:00 a.m.

The hearing convened as scheduled on August 25, 2023. Counsel for PGW called in to the hearing with a witness and was prepared to proceed. Mr. Furbert did not call in for the hearing. Respondent's counsel moved that the Complaint be dismissed for lack of prosecution. I advised that I would take the motion under advisement and adjourned the hearing.

Following the hearing, the Complainant contacted an Office of Administrative Law Judge (OALJ) scheduler and my legal assistant to advise that he had experienced technical

difficulties when trying to connect to the hearing. As a result, I had the matter relisted for a hearing on another date.

By Initial Call-In Telephone Hearing Notice dated August 25, 2023, the initial call-in telephonic hearing was rescheduled for October 3, 2023 at 10:00 a.m.

I issued another Prehearing Order on September 5, 2023. The Prehearing Order again advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. The Prehearing Order further directed the parties to comply with various procedural requirements and again explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on October 3, 2023. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Patricia Bernard, a PGW Customer Review Officer, and Kevin Knecht, a PGW Field Service Supervisor. The Respondent submitted eight exhibits, all of which were admitted into the record.

The record closed on October 27, 2023, the date the transcript was filed with the Commission.

#### FINDINGS OF FACT

1. The Complainant in this case is Mujaffa Furbert.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant resides at 122 West Upsal Street, Philadelphia, PA 19119 (service address). Tr. 15.

4. The Complainant is a PGW gas customer. Tr. 15.

### **Incorrect Bills**

5. The Complainant's home is approximately 6,000 square feet and includes approximately 13 rooms. Tr. 17-18.

6. The Complainant maintains a temperature of 68 degrees on his heater and only heats half of his home. Tr. 25, 38-39.

7. On January 20, 2021, the Complainant filed a dispute with PGW about his gas bill for the period November 30, 2020 through December 31, 2020 in the amount of \$1,100.02. Tr. 45; PGW Exh. 2.

8. PGW investigated the Complainant's dispute and determined that the bill was correct as rendered. Tr. 46; PGW Exh. 2.

9. On March 5, 2021, the Complainant filed a dispute with PGW alleging that his gas bills were too high. Tr. 46; PGW Exh. 3.

10. PGW investigated the Complainant's dispute and determined that the bills were correct as rendered. Tr. 46-47; PGW Exh. 3.

11. On or about July 2021, the Complainant requested that PGW test his meter. Tr. 22-23, 49-50; PGW Exh. 5.

12. On July 15, 2021, PGW replaced the meter at the service address due to age. Tr. 24, 50-51; PGW Exh. 5.

13. PGW subsequently tested the Complainant's old meter and concluded that the meter passed testing within a two percent variance and was considered to be accurate. Tr. 23, 51; PGW Exh. 5.

14. In approximately November 2022, the Complainant replaced the boiler in his house. Tr. 21, 35.

15. The Complainant replaced the copper piping going to the boiler but left the existing cast iron lines to feed older radiators. Tr. 64.

16. The Complainant has also replaced several of the radiators in his home. Tr. 36.

17. The Complainant experienced a drastic decrease in his gas usage after replacing his boiler with a high efficiency boiler. Tr. 20.

18. On January 6, 2023, the Complainant filed a dispute with PGW challenging the bill for gas service for the period November 22, 2022 through December 28, 2022. Tr. 47; PGW Exh. 4.

19. PGW investigated the Complainant's dispute and determined that the bill was correct as rendered. Tr. 47.

20. On May 23, 2023, at the Complainant's request, PGW tested the Complainant's meter. Tr. 53; PGW Exh. 6.

21. PGW tested the Complainant's meter and concluded that the meter passed testing and was considered to be accurate. Tr. 53; PGW Exh. 6.

22. During the May 23, 2023, site visit, a Field Service Supervisor walked the fuel line to investigate for foreign load and also to gather an accurate BTU count. Tr. 61, 63.

23. The Field Service Supervisor did not find any foreign load at the service address. Tr. 62.

24. The Field Service Supervisor observed holes in the walls that had been plastered as well as a lack of insulation. Tr. 63.

25. The Field Service Supervisor further observed that the windows and doors at the service address were outdated and drafty. Tr. 63.

26. The other technician on site checked for gas leaks. Tr. 62-63.

27. The technician did not find any gas leaks at the service address. Tr. 62.

28. The bills issued to the Complainant are based on actual meter readings. Tr. 53.

### **Payment Arrangement**

29. On February 2, 2023, the Complainant received a Commission-issued payment arrangement. Tr. 55; PGW Exh. 7.

30. At the time the Complainant requested a Commission-issued payment arrangement, his household was a three-person household. Tr. 57; PGW Exh. 8.

31. At the time the Complainant requested a Commission-issued payment arrangement, he reported \$0 in income. Tr. 57; PGW Exh. 8.

32. The Commission's Bureau of Consumer Services (BCS) authorized a payment arrangement requiring the Complainant to pay a budget of \$827 plus \$215 towards arrears, for a total monthly payment of \$1,042. Tr. 57; PGW Exh. 8.

33. The Complainant defaulted on this payment arrangement. Tr. 55, 57; PGW Exh. 7.

34. As of the time of the hearing, the Complainant's household is still a three-person household consisting of himself and his two nieces. Tr. 17.

35. As of the time of the hearing, the Complainant's household income was still \$0. Tr. 33.

36. Between April 18, 2020 and August 17, 2023, the Complainant only made eight payments towards his PGW gas account. Tr. 44; PGW Exh. 1.

37. As of the date of the hearing, the Complainant's outstanding balance with PGW totaled \$16,344.85. Tr. 15, 43; PGW Exh. 1.

### 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. 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. 1960); *Murphy v. 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 his 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).

### **Incorrect Bills**

The Complainant alleged that PGW overbilled him for his gas usage at the service address.

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

The record in this matter demonstrates that the Complainant’s gas bills significantly decreased once he replaced his gas boiler and made some other changes to his heating system. Tr. 20. Moreover, the record reflects that the Complainant’s meters were tested on two separate occasions and determined to be operating properly. Tr. 23, 51, 53; PGW Exhs. 5 & 6. Additionally, the record demonstrates that PGW did not find any discrepancies in the pattern of usage at the property, and that the billing for the service address is consistent for a property of this size. Tr. 48. The Complainant did not offer anything other than his opinion to demonstrate that PGW billed him inaccurately for service.<sup>1</sup> Accordingly, the Complainant’s Complaint on this issue is denied.

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<sup>1</sup> “Mere bald assertions ... do not constitute evidence.” *Pa. Bur. of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); *see also, Steffy's Pattern Shop v. Frontier Commc'ns of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

## Payment Arrangement

The Complainant also requested a payment arrangement. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–19 (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints.

Regarding the length of payment arrangements, the Public Utility Code provides the following:

The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. 1405(b).

Regarding the Complainant's request for a second Commission-issued payment arrangement, the Public Utility Code provides that "[a]bsent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement." 66

Pa.C.S. § 1405(d). A “change in income” is defined at 66 Pa.C.S. § 1403 as “[a] decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.”

Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e). A “significant change in circumstance” is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

66 Pa.C.S. § 1403.

Regarding the Complainant’s first Commission-issued payment arrangement, the record reflects that the Complainant’s three-person household gross monthly income was \$0 when he received that payment arrangement. Tr. 57; PGW Exh. 8. The Complainant testified that his household is currently still a three-person household and his household’s gross monthly income is still \$0. Tr. 17, 33. Since the Complainant’s gross monthly income has not changed since the Commission granted him his first payment arrangement, he does not meet the definition of a “change in income” set out in 66 Pa.C.S. § 1403. As such, the Complainant is not eligible for a second Commission-issued payment arrangement.

Moreover, the Complainant did not present any evidence to indicate that he had a significant change in circumstances as defined under 66 Pa.C.S. § 1403 that caused him to default on his prior Commission-issued payment arrangement. Since the Complainant did not default on his prior Commission-issued payment arrangement due to a significant change in circumstances, I cannot conclude that he is entitled to an extension of his Commission-issued payment arrangement under 66 Pa.C.S. § 1405(e).

Accordingly, the Complainant's request for a second Commission-issued payment arrangement, or an extension of his previous Commission-issued payment arrangement, is denied.

#### 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. "Mere bald assertions ... do not constitute evidence." *Pa. Bur. of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Ass'n of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000); *see also, Steffy's Pattern Shop v. Frontier Commc'ns of Pa., Inc.*, Docket No. R-00994808 (Opinion and Order entered Mar. 3, 2000).

5. The Commission stated that it will consider the following factors in a high bill case: 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).

6. In a high bill case, “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 v. PECO Energy Co.*, Docket No. C-2010-2187197, at 5 (Opinion and Order entered Nov. 15, 2011).

7. The Complainant did not meet his burden of proving that PGW billed him incorrectly for gas service. 66 Pa.C.S. § 332(a).

8. Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement. 66 Pa.C.S. § 1405(d).

9. “Change in income” is defined as “[a] decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.” 66 Pa.C.S. § 1403.

10. Section 1405(e) of the Public Utility Code allows for an extension by six months of a payment arrangement in default if the default was a result of a significant change in circumstance. 66 Pa.C.S. § 1405(e).

11. “Significant change in circumstance” is defined as any of the following circumstances which are experienced by customers with household income less than 300% of the Federal poverty level: 1) the onset of a chronic or acute illness resulting in a significant loss in the customer's household income; 2) catastrophic damage to the customer's residence resulting in a

significant net cost; 3) loss of the customer's residence; and 4) increase in the customer's number of dependents in the household. 66 Pa.C.S. § 1403.

12. Complainant failed to sustain his burden of demonstrating that he should receive a second Commission-issued payment arrangement or an extension of his previous payment arrangement. 66 Pa.C.S. § 332(a).

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Mujaffa Furbert at Mujaffa Furbert v. Philadelphia Gas Works, Docket No. C-2023-3040010 is denied; and
2. That the docket at Docket No. C-2023-3040010 be marked closed.

Date: January 23, 2024

\_\_\_\_\_/s/  
Christopher P. Pell  
Deputy Chief Administrative Law Judge