

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kingsley Donaldson	:	
	:	
v.	:	F-2024-3044581
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Complainant did not establish by a preponderance of evidence that his bills were incorrect or that there is or was a reliability, safety or quality problem with his utility service and those claims are denied. However, a payment arrangement is awarded to the Complainant.

HISTORY OF THE PROCEEDING

On December 5, 2023, Kingsley Donaldson (Mr. Donaldson or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or the Company). Mr. Donaldson checked the boxes on the Formal Complaint form indicating that there were incorrect charges on his bill and that he was having a reliability, safety or quality problem with his utility service. Under other, he wrote that his gas bill was “obnoxiously high,” and there was no reason for a \$2000-

\$3000 gas bill for one month. This is an appeal from a Bureau of Consumer Services decision, BCS #2918053.¹

PGW filed an Answer on December 26, 2023. PGW denied that there were incorrect charges on the Complainant's bill and that there was a problem with gas service provided. The Company also stated that the Complainant established PGW service at the service address on December 15, 2022, and that it was listed as residential gas heat.

An Initial Call-In Telephonic Hearing Notice was issued on January 2, 2024, setting a telephonic hearing for March 5, 2024.

A Prehearing Order was issued on January 22, 2024. The Prehearing Order advised the parties of the hearing procedures, and that the Complainant has the burden of proof.

On February 28, 2024, PGW filed a Motion to Continue the hearing, stating that the Company needed additional time to investigate the Complaint. An Order granting the continuance was issued on February 28, 2024.

On February 29, 2024, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued, setting the hearing for April 30, 2024. A Prehearing Order was issued on April 2, 2024.

The hearing began as scheduled on April 30, 2024. Mr. Donaldson represented himself and presented one witness, Raneé Donaldson.

PGW was represented by Anita Murray, Esquire. On behalf of PGW, Attorney Murray presented seven exhibits during the hearing, PGW Exhibits 1-6A. David Kaufman, PGW Customer Review Officer, testified on behalf of PGW.

¹ A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

All exhibits presented at the hearing were admitted into the record. PGW was also directed to file additional information following the hearing. On April 30, 2024, PGW filed PGW Exhibit 7, which will be admitted into the record herein.

The record closed on May 28, 2024, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Kingsley Donaldson.
2. The Respondent is Philadelphia Gas Works,
3. The Complainant was a PGW customer on Westminster Avenue in Philadelphia, Pennsylvania, from October 14, 2022, to December 16, 2022. Tr. 50.
4. The Complainant contacted PGW to transfer his service to Hazel Avenue Philadelphia, Pennsylvania (service address) on December 15, 2022. Tr. 57; PGW Exhibit 1.
5. Mr. Donaldson continued to live at the service address at the time of the hearing. Tr. 10. T
6. The Complainant's mother, Rane Donaldson, and two younger brothers live with him. Tr. 18-19
7. The service address is a two story three-bedroom apartment and has a gas water heater, stove and heating system. Tr. 13.
8. The Westminster Avenue address had five bedrooms and an electric stove.

9. At the time of the hearing, the Complainant's balance for the service address for the period December 15, 2022 to April 23, 2024 was \$5,753.51. Tr. 34; PGW Exhibit 2.

10. The Complainant's balance for Westminster Avenue is \$42.98. PGW Exhibit 2, p. 3.

11. The Complainant's total PGW balance at the time of the hearing was \$5,796.49. Tr. 35.

12. From October 1, 2022 to April 23, 2024, three payments were made on the account. Tr. 35.

13. The three payments made on the account were LIHEAP (Low Income Energy Assistance Program) grants. Tr. 35.

14. PGW bills sent to the Complainant for the contested period are as follows:

Address	Date of bill	Amount	Current charges
Westminster	11/4/2022	\$113.37	\$113.37
Westminster	12/6/2022	\$645.73	\$530.66
Hazel	1/7/2023	\$891.92	\$236.53
Hazel	1/19/2023	\$1,829.61	\$937.69
Hazel	2/16/2023	\$1,817.76	\$866.01

15. The gas meter at the service address was removed and replaced on February 29, 2024 and tested on March 8, 2024. PGW Exhibit 6, p.2.

16. The March 8, 2024 meter test found that the meter operated within acceptable levels. PGW Exhibit 6, pp. 2-3.

17. The service address monthly household income is \$3248, \$2400 per month salary of Mr. Donaldson and \$848 per month disability for one brother. Tr. 11, 28.

DISCUSSION

The Pennsylvania Public Utility Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

“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, or contract carriers by motor vehicle, 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.

As the proponent of a rule or order, the Complainant bears the burden of proof pursuant to Section 332(a) of the Pennsylvania Public Utility Code (Code). 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate by a preponderance of the evidence that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. 66 Pa.C.S. § 701.

Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). 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. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037(Pa. 1980). A trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961).

Generally, where a complainant alleges a high bill, a complainant may establish a *prima facie* case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If the Complainant has submitted such evidence, the burden of going forward with evidence shifts to the Respondent. *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980) (*Waldron*).

The Commonwealth Court expanded the Commission's *Waldron* ruling in *Milkie v. Pennsylvania Public Utility Commission.*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*). The Commonwealth Court held that the customer may prove his or her case by circumstantial evidence and that in making its determination, the Commission may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. *Bennett v Peoples Nat. Gas Co.*, Docket No. C-2009-2122979 (Opinion and Order entered Oct. 13, 2010); *Thomas v PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011).

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).

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).

Mr. Donaldson is contesting his PGW bills as too high and asserts that he is having a reliability, safety and quality problem. He also would like a payment arrangement.

Reliability, Safety and Quality

As to his claim that he has a reliability, safety or quality problem, Mr. Donaldson testified that the service address is cold downstairs and hot upstairs and that there is a problem with drafts. Tr. 15-16. Ms. Ranee Donaldson also testified that the service address is very drafty and that when this was brought to the attention of the landlord, the landlord took no action. Tr. 22-23.

Given the description of his concerns, the Complainant did not establish that PGW is responsible for the problems alleged in violation of the Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. There was no showing that an action or omission of PGW caused the drafts or problems with the heating system at the service address and therefore there is no violation.

High Bill

Mr. Donaldson is contesting his PGW bills for the service address for the period December 2022 to February 2023. Tr. 11. He testified that he had paid about \$100 a month on Westminster Avenue and then after moving to the service address, he received a \$3,000 bill and did not understand how it could be that high. He previously lived in a five-bedroom house and

the service address apartment, where he received the high bill, has three bedrooms. Tr. 12, 14. Mr. Donaldson also questioned how a gas bill could “go from normal to thousands and thousands of dollars a month.” Tr. 24.

The Complainant has not established a high bill *prima facie* case here. While the number of people in the household did not change in the move from Westminster to the service address, there was no showing that the potential for energy utilization is low or that the prior billing history showed no previous abnormalities. Mr. Donaldson’s bill increased from \$113 in December of 2022 to over \$1,800 in February of 2023. PGW Exhibit 2, FOF 14. He also was billed over \$3,000 by PGW in December of 2023. PGW Exhibit 2. However, these billing increases cannot be attributed to any violations by PGW.

It was apparent during the hearing that Mr. Donaldson believed that his gas bill was being paid. However, PGW records show that for almost a two-year period, October 1, 2022 to April 23, 2024, PGW received only three payments for the Complainant’s account, and all were LIHEAP grants. The record shows no private payments to the service address account. Mr. Donaldson’s high bill is a result of accumulated nonpayment rather than incorrect billing. PGW Exhibit 2.

Additionally, there was no showing that there was a problem with the meter or its connections that would have resulted in incorrect billing. After a request from Mr. Donaldson on February 13, 2024, PGW sent a technician to the service address to trace the meter and the piping. PGW Exhibit 4, Tr. 39. PGW technician investigated and found no foreign load at the address. Tr. 55. Also, on February 29, 2024, PGW removed and replaced the meter at the Complainant’s request. PGW Exhibit 6, 6A. The meter tested within acceptable levels of accuracy. *Id.*

The Complainant did not establish a high bill case or that PGW billed him incorrectly.

Payment Arrangement

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–1419, applies to complainants alleging inability to pay and requesting a Commission-issued payment arrangement. The Act includes strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued. Section 1405(a) of the Public Utility Code reads as follows:

§ 1405. Payment arrangements

- (a) GENERAL RULE.-- The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants, and customers. The commission is authorized to establish payment arrangements between a public utility, customers, and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a). However, the terms of the payment arrangement the Commission may award are as follows:

(b) Length of payment arrangements. 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).

The poverty-level for a family of four household is \$2,500 per month. With a household income of \$3,248, the household income is less than 150% of the federal poverty level.² Therefore, the Complainant is eligible for and will be awarded a Level 1 five-year, or sixty-month payment arrangement. 66 Pa.C.S. § 1405(a)(1).

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 Complainant has the burden of proof. 66 Pa.C.S. § 332(a).

3. The record does not establish a *prima facie* high bill case. *See Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

4. The record does not establish that PGW is responsible through a violation of the Code or a regulation or order of the Commission for the high bills or heating problems alleged in the Complaint. 66 Pa.C.S. § 701.

5. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–1419, provides restrictions and guidelines for awarding a Commission-issued payment arrangement.

6. The Complainant may be awarded a Level 1 payment arrangement under 66 Pa.C.S. § 1405(a)(1).

² 150% of the poverty-level for a household of four is \$3,750. *See* Federal poverty guidelines, 89 Fed. Reg. 2961 (Jan. 17, 2024); <https://aspe.hhs.gov/sites/default/files/documents/7240229f28375f54435c5b83a3764cd1/detailed-guidelines-2024.pdf>

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW Exhibit 7 is admitted into the record.
2. That the Complaint of Kingsley Donaldson against Philadelphia Gas Works at Docket No. F-2024-3044581 is dismissed in part and granted in part.
3. That the Complainant is awarded a Commission-issued payment arrangement of five years on his outstanding balance.
4. That within 30 days of entry of the Final Commission Order in this matter, Philadelphia Gas Works will calculate the Complainant's balance and the 1/60th payment due each month in addition to the monthly bill payment and issue written notice to the Complainant.
5. That beginning with the first billing due date following the entry of a Final Commission Order in this matter, Kingsley Donaldson shall make monthly payments consisting of his monthly bill plus one-sixtieth (1/60th) of the balance accrued on his account, continuing thereafter on the due date for the payment of each regular monthly bill, until the arrearage on his account has been paid in full.
6. That as long as Kingsley Donaldson keeps the payment schedule stated in this order and timely pays his monthly bill plus 1/60th of the balance accrued, Philadelphia Gas Works shall not suspend or terminate his utility service except for valid safety or emergency reasons or assess late payments or finance charges against the account.

