

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bhavin Patel

v.

UGI Utilities, Inc.

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C-2023-3038563

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This initial decision finds that the Complainant has failed to meet his burden of proof to demonstrate that the Respondent’s Weather Normalization Adjustment is unjust or unreasonable.

HISTORY OF THE PROCEEDING

On February 28, 2023, Bhavin Patel (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI or Respondent). In the Complaint, Mr. Patel indicated that he believed that the Weather Normalization Adjustment (WNA) was unjust and unreasonable. Mr. Patel requested a refund of the amount he paid towards the WNA and also stated that the WNA should be abolished.

On March 20, 2023, UGI filed an Answer and New Matter, denying the material allegations of the Complaint and requesting that the Complaint be dismissed. On March 24, 2023, Mr. Patel filed a response to the New Matter denying that the Complaint should be dismissed.

On March 29, 2023, a Call-In Telephonic Hearing Notice was issued which indicated that an initial hearing was scheduled for May 11, 2023 and the matter was assigned to me.

On April 24, 2023, I issued a Prehearing Order which indicated the procedures for the hearing.

On May 9, 2023, the initial hearing was changed to a prehearing conference via Interim Order.

On May 10, 2023, UGI filed its prehearing conference memorandum.

On May 11, 2023, the prehearing conference was held, and procedural matters were addressed at that time.

On May 18, 2023, an Initial Mediation Session Notice was issued which indicated that a mediation session would be held on June 20, 2023.¹

On August 31, 2023, UGI filed a Motion for Summary Judgement indicating that the Complainant had not stated grounds on which the Commission has jurisdiction to provide him with relief.

¹ The parties were unable to resolve the issues in this case through mediation.

On October 6, 2023, UGI filed a Motion to Stay the proceedings.

On January 4, 2024, I issued an Interim Order granting in part and denying in part the Motion for Summary Judgement. I granted the Motion with respect to the Complainant's request for monetary damages, as the Commission does not have jurisdiction in such cases. However, I denied the request to dismiss the Complaint completely as there were legal issues about which the parties disagreed.

On February 15, 2024, an Initial Telephonic Hearing Notice was issued, and the matter was set for hearing on April 17, 2024.

On February 16, 2024, the Complainant contacted my office to indicate that he was out of the country and would not return until May 2024 and requested a continuance which was granted.

On the same date, a Cancelled/Rescheduled Initial Hearing Notice was issued, and the matter was rescheduled for May 29, 2024.

The hearing convened as scheduled on May 29, 2024. The Complainant represented himself and testified on his own behalf. The Complainant also presented six exhibits at the hearing, which were entered into the record with the exception of Complainant Exh. A. UGI was represented by counsel, Megan Rulli, Esquire. UGI also presented the testimony of two witnesses, John Taylor and Kimberly Bassininsky and offered six exhibits which were entered into the record. At the time of the hearing, I also requested that UGI submit Late-Filed Exhibit No. 4 by no later than June 5, 2024. The Complainant was given until June 12, 2024 to submit written objections.²

² The parties complied with the schedule for the submission of the Late-Filed Exhibit and objections and the exhibit will be entered into the record through this decision. The Complainant objected to the exhibit on the basis that it contained

The record closed on July 22, 2024, when I received my copy of the 109-page hearing transcript.

FINDINGS OF FACT

1. The Complainant is Bhavin Patel, who lives at 8572 Mayfair Court, Breinigsville, Pennsylvania 18031 (Service Address). Tr. 14.
2. The Respondent is UGI Utilities, Inc.
3. UGI's WNA was approved by the Commission in *Pennsylvania Public Utilities Commission v. UGI Utilities, Inc. – Gas Division*, Docket No. R-2021-3030218 (Order entered Sept. 15, 2022). UGI Gas St. No. 1R.
4. The Complainant was charged for WNA from September 2, 2023 to May 3, 2024 a total of \$22.78. Tr. 39; UGI 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, the Complainant must show that the respondent public utility is responsible or accountable for the problem

information that was not originally requested by the presiding officer. While there is some additional information in the exhibit, it does not preclude the exhibit from being entered into the record. Therefore, the Complainant's objection is overruled.

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 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 and W. Ry. 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. Pa. 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), *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).

Weather Normalization Adjustment Challenge

The Complainant challenges UGI's WNA.

To the extent that customers challenge a utility's Commission-approved, tariffed rates for service, customers have the burden of proving by a preponderance of the evidence that the rates are unjust, unreasonable or in violation of a Commission regulation or order. *Schellhammer v. Pa. Pub. Util. Comm'n*, 629 A.2d 189 (Pa. Cmwlth. 1993); 66 Pa.C.S. §§315(a), 332(a), 1301.

In determining whether the WNA proposed here is just and reasonable, the Commission looks at various consideration, as follows:

§ 69.3302. Distribution rate considerations.

(a) In determining just and reasonable alternative distribution ratemaking mechanisms and rate designs that promote the purpose and scope of this statement of policy and the objectives of 66 Pa.C.S. § 1330 (relating to alternative ratemaking for utilities), the Commission may consider, among other relevant factors, the following:

(1) How the ratemaking mechanism and rate design align revenues with cost causation principles as to both fixed and variable costs.

(2) How the ratemaking mechanism and rate design impact the fixed utility's capacity utilization.

(3) Whether the ratemaking mechanism and rate design reflect the level of demand associated with the customer's anticipated consumption levels.

(4) How the ratemaking mechanism and rate design limit or eliminate interclass and intraclass cost shifting.

(5) How the ratemaking mechanism and rate design limit or eliminate disincentives for the promotion of efficiency programs.

(6) How the ratemaking mechanism and rate design impact customer incentives to employ efficiency measures and distributed energy resources.

(7) How the ratemaking mechanism and rate design impact low-income customers and support consumer assistance programs.

(8) How the ratemaking mechanism and rate design impact customer rate stability principles.

(9) How weather impacts utility revenue under the ratemaking mechanism and rate design.

(10) How the ratemaking mechanism and rate design impact the frequency of rate case filings and affect regulatory lag.

(11) If or how the ratemaking mechanism and rate design interact with other revenue sources, such as Section 1307 automatic adjustment surcharges, 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments), riders such as 66 Pa.C.S. § 2804(9) (relating to standards for restructuring of electric industry) or system improvement charges, 66 Pa.C.S. § 1353 (relating to distribution system improvement charge).

(12) Whether the alternative ratemaking mechanism and rate design include appropriate consumer protections.

(13) Whether the alternative ratemaking mechanism and rate design are understandable to consumers.

(14) How the ratemaking mechanism and rate design will support improvements in utility reliability.

(b) In any distribution rate filing by a fixed utility under 66 Pa.C.S. § 1308 (relating to voluntary changes in rates) that proposes an alternative ratemaking mechanism and rate design, the fixed utility shall explain how these factors impact the distribution rates for each customer class.^[3]

The Complainant objects to the WNA on a number of bases. First, he alleges that the WNA is like gambling. Mr. Patel objects to this on religious grounds as he is opposed to gambling. Further, the Complainant contends that the WNA is more likely to charge the customers than it is to provide them with a credit. Lastly, the Complainant indicates that the WNA is difficult for a customer to prepare for as it is likely to change from month to month.

³ Pa. Code § 69.3302.

UGI's witness, John Taylor, testified that the WNA is a way to adjust customer bill calculations to better align the cost recovery the Commission allows with the distribution revenues the utility receives. UGI Gas St. No. 1R at 4-5. He noted that where actual weather deviates from the normal weather used to design the volumetric distribution rates, the utility will either under-recover or over-recover the level of distribution revenues approved by the Commission and customers will either overpay or underpay for these services. UGI Gas St. No. 1R at 4-5.

Further, Mr. Taylor stated that during warmer weather, the utility may under-recover its costs, necessitating cost management efforts to maintain financial stability. Conversely, colder weather leads to higher bills for customers, potentially burdening customers with increased costs above the cost of providing distribution service. This dynamic creates a risk of customers overpaying during cold periods and the utility under-recovering during warm periods. Therefore, because of abnormal weather and a rate design that is based, in substantial part, on customer usage, the amount of distribution revenue (i.e., non-gas sales revenues and non-reconcilable surcharge revenues) collected from customers can vary widely from the revenue requirement level authorized by the regulator. UGI Gas St. No. 1R at 5-6.

Moreover, for a customer, Mr. Taylor contends that a WNA is advantageous because:

1. It reflects the actual costs of providing distribution service for each customer. It better aligns the charges to each customer with the cost to serve each customer within a particular rate class.
2. It reduces bill variability due to weather in the month when the variation occurs and provides bill relief in severely cold months.
3. The WNA provides more stable annual bill amounts and mitigates volatility in monthly gas bills. This helps

customers budget for and pay their bills. Stable bills also help improve customer satisfaction.

4. Customers continue to benefit from their energy conservation efforts, as the actual usage on each customer's bill is utilized to calculate the WNA adjustment, and that usage level reflects the conservation behaviors of each customer.

UGI Gas St. No. 1R at 8-9.

Lastly, Mr. Taylor asserts that the WNA mechanism strikes an appropriate balance between the interests of both the Customer and the Company. UGI Gas bills its customers in a manner to reflect the actual weather conditions that underlie its Commission-authorized base rates on a monthly billing basis. The WNA mechanism provides the Company with a reasonable opportunity to earn its allowed rate of return on its investment and removes bill variability due to a factor outside of the customer's control (i.e., variations in weather). UGI Gas St. No. 1R at 13.

Further, Ms. Kimberly Bassininsky testified that Mr. Patel's actual usage of natural gas is used in the WNA calculation. Actual usage for the current bill period as well as historical average daily baseload are two inputs used in the WNA calculation. The calculation is performed for each customer based on their usage and weather. The WNA adjusts distribution charges for the period based on experienced weather. For clarification, the WNA does not impact the commodity costs a customer pays. Commodity charges are based on actual usage. UGI Gas St. No. 2R at 17.

UGI's WNA charge has been approved by the Commission and is included in UGI's tariff filed with the Commission. A strong presumption exists that rates in a utility's Commission-approved tariff are just and reasonable. *Popowsky v. Pa. Pub. Util. Comm'n*, 669 A.2d 1029 (Pa. Cmwlth. 1995). To satisfy the burden of proving that the utility's Commission-approved rates for the WNA are unjust and unreasonable, the

Complainant cannot merely state personal beliefs or pose questions without offering concrete proof. “Mere bald assertions, personal opinions or perceptions do not constitute evidence.” *Pa. Bur. of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atl. Power Sup. Assn. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *see also Steffy's Pattern Shop v. Frontier Comm. of Pa., Inc.*, Docket No. R-00994808C0001 (Order Entered Mar. 3, 2000).

Based on the above, the Complainant has not met his burden of establishing that the WNA is unjust or unreasonable and the Complaint must be dismissed.

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. A utility may only implement rates only after receiving rate approval from the Commission. 66 Pa.C.S. §§1301, 1303, 2812.
5. A utility’s rates for the unbundled component charges subject to the Commission’s jurisdiction must be just and reasonable. 66 Pa.C.S. §1301.

6. A strong presumption exists that rates in a utility's Commission-approved tariff are just and reasonable. *Popowsky v. Pa. Pub. Util. Comm'n*, 669 A.2d 1029 (Pa. Cmwlth. 1995).

7. Mere bald assertions, personal opinions or perceptions do not constitute evidence. *Pa. Bur. of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atl. Power Sup. Assn. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196 (Pa. Cmwlth. 2000); *see also Steffy's Pattern Shop v. Frontier Comm. of Pa., Inc.*, Docket No. R-00994808C0001 (Order Entered Mar. 3, 2000).

8. The Complainant has not met his burden of establishing that the Weather Normalization Adjustment charge is unjust or unreasonable. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That UGI Utilities, Inc. Late-Filed Exhibit No. 4 is entered into the record through this decision.

2. That the Complaint filed by Bhavin Patel in *Bhavin Patel v. UGI Utilities, Inc.*, at Docket No. C-2023-3038563, is denied and dismissed.

