

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jacqueline Brisbane

v.

Philadelphia Gas Works

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C-2023-3044625

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s Complaint because she failed to sustain her burden of proving that Philadelphia Gas Works violated any Commission orders or regulations concerning charges on her bill.

HISTORY OF THE PROCEEDINGS

Jacqueline Brisbane (“Ms. Brisbane” or “Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against the Philadelphia Gas Works (“PGW”) on November 20, 2023. Ms. Brisbane alleged in the Complaint that there are incorrect charges on her PGW bill. Specifically, she contends that three bills issued for service between November 16, 2022

and February 15, 2023 for the first-floor unit of a two-unit dwelling are incorrect and too high.

PGW filed an Answer on December 26, 2023. In the Answer, PGW denied that there are incorrect charges and that the bills are based on actual meter readings. PGW also stated in the Answer that at the Complainant's request, the meter at issue was exchanged for testing and that it tested accurate.

On January 3, 2024, an Initial Call-In Telephonic Hearing Notice scheduled a hearing for February 15, 2024 and assigned the matter to Administrative Law Judge Darlene Heep. On February 15, 2024, a Call-In Telephone Cancellation / Reschedule Hearing Notice was issued, setting a hearing for April 10, 2024. On February 23, 2024, Judge Heep issued a Prehearing Order in this matter.

The April 10, 2024 hearing before Judge Heep began as scheduled. Ms. Brisbane appeared *pro se*. Ms. Brisbane did not offer any exhibits, nor did she call any witnesses in support of her Complaint. PGW was represented by Anita J. Murray, Esquire. PGW presented as a witness Patricia Bernard, customer review officer, and 15 exhibits, all of which were admitted into the record as PGW Exhibits 1-15.

The record initially closed on April 26, 2024 when a copy of the 86-page transcript was received.

At Judge Heep's direction, on July 8, 2024, a Hearing Notice was issued advising the parties that a further hearing in this matter would be held on September 3, 2024, at 10:00 a.m.¹ In an Order dated August 1, 2024, Judge Heep explained that the

¹ Due to administrative error, the Notice of Hearing was erroneously dated February 15, 2024, and was labelled as a Cancelled / Rescheduled Hearing Notice rather

record in this matter would be re-opened and that a further hearing be held in this matter to address two specific issues (a) the charges for the second-floor unit for the period 2020-2024; and (b) the inspections that are the subjects of PGW Exhibits 14-15.

On August 8, 2024, a Judge Change Notice and Hearing Cancellation/Reschedule Notice was issued, indicating that the case was no longer assigned to Judge Heep, that I would serve as the presiding officer in this matter, and providing instructions on how to call-in and participate in the September 3, 2024 further hearing. A Prehearing Order was issued on August 8, 2024.

On August 27, 2024, counsel to PGW filed a Motion for continuance, indicating that the parties wished to continue the hearing scheduled for September 3, 2024, and schedule a prehearing conference in this matter. Counsel advised that the Complainant had no objection to the Motion.

By email dated August 29, 2024, the parties were advised that the September 3, 2024 hearing would be converted to a prehearing conference to determine if a further hearing was necessary and appropriate in this matter.

The September 3, 2024 prehearing conference convened as scheduled. Both parties appeared and indicated that they preferred to avoid a further hearing and did not wish to supplement the record in any way. The record closed upon receipt of the transcript for the prehearing conference on September 9, 2024. The matter is ripe for decision.

than a Notice of a Further Hearing. Judge Heep issued a second prehearing order in this matter on July 15, 2024.

FINDINGS OF FACT

1. The Complainant is Jacqueline Brisbane, who owns 2434 76th Avenue, Philadelphia, Pennsylvania. (Service Address). Tr. 9.
2. The Respondent is PGW, a gas company that provides residential gas service at the service address.
3. The Service Address is one side of a duplex property containing two residential apartment units. Tr. 9.
4. Apartment Unit 1 is for the first floor of the Service Address and apartment Unit 2 is for the second floor of the Service Address. Tr. 9-10.
5. On March 28, 2018, the meter for Unit 1 at the service address was exchanged; meter # 2015076 was removed and meter # 2246377 was installed. Tr. 49-50; PGW Exhibit 12.
6. On March 28, 2018, PGW found that three gas appliances in Unit 1 at the service address were operational, including: a 95,000 BTU house heater; a 60,000 BTU range; and a 40,000 BTU water heater. Tr. 49-50; Exhibit 12.
7. On July 6, 2022, PGW conducted an inside leak survey of the service address. Tr. 50-51; Exhibit 13.
8. On July 6, 2022, PGW found that only one appliance, a 60,000 BTU gas range in Unit 1 at the service address, was operational. Tr. 51; Exhibit 13.

9. The Complaint relates to charges for service to Unit 1 of the Service Address and bills issued in December 2022, January 2023 and February 2023. Tr. 11 - 12.

10. Charges for Unit 1 at the service address for the months of November through March for the years 2020 to 2024 were as follows:

Month/Year	Billing/Usage	2020	2021	2022	2023	2024
November	Bill	\$25.66	\$31.43	\$49.20	\$23.18	
	CCF Usage	7	9	9	4	
December	Bill	\$24.52	\$30.36	\$167.21	\$23.27	
	CCF Usage	6	8	74	4	
January	Bill		\$28.13	\$51.17	\$249.37	\$44.74
	CCF Usage		8	19	111	16
February	Bill		\$28.35	\$71.16	\$174.43	\$47.96
	CCF Usage		8	30	70	17
March	Bill		\$24.98	\$58.56	\$26.25	\$32.27
	CCF Usage		6	22	5	8

Tr. 11-12; PGW Exhibit 1.

11. On February 13, 2023, meter #2246377 for Unit 1 at the service address was removed for testing. Tr. 45-46; PGW Exhibits 6, 7.

12. On February 13, 2023, PGW found that three gas appliances in Unit 1 at the service address were operational, including: a 95,000 BTU house heater; a 60,000 BTU range; and a 40,000 BTU water heater. Tr. 54; Exhibit 14.

13. On February 16, 2023, the meter for Unit 1 at the service address, meter #2246377, was tested and found to function within acceptable levels of between 99% and 100% accuracy. Tr. 45-46, 53-54; PGW Exhibits 7, 14.

14. On March 13, 2023, the Complainant contacted PGW and stated that she was not using the gas, that the gas usage shown on her bill for service was incorrect and that her bill was too high. Tr. 46; Exhibit 8.

15. Via letter dated April 4, 2023, PGW reminded the Complainant of the results of the February 16, 2023 meter test and informed her that the \$174.43 bill for service from January 18, 2023 through February 15, 2023 was correct as rendered. Tr. 46-47; Exhibit 9.

DISCUSSION

Legal Standards

The Pennsylvania Public Utility Code requires each public utility to provide 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. As explained in *Country Place Waste Treatment Co., Inc. v. Pennsylvania Public Utility Commission*, 654 A.2d 72 (Pa. Cmwlth. 1995):

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.

654 A.2d at 76 (citing 66 Pa.C.S. § 102).

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking relief from the Commission has the burden of proof. The Complainant seeks relief from the Commission, and, therefore, has the burden of proof in these proceedings.

“Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, a complainant will prevail. If the utility rebuts complainant’s evidence, the burden of going forward with the evidence shifts back to a complainant, who must rebut the utility’s evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. *Replogle v. Pa. Elec. Co.*, 54 Pa.P.U.C. 528 (1980); *Waldron v. Phila. Elec. Co.*, 54 Pa.P.U.C. 98 (1980).

If a respondent submits evidence of “co-equal” weight to counter a complainant’s evidence, the complainant has not satisfied the burden of proof unless additional evidence opposing the respondent’s evidence is presented. *Morrissey v. Pa. Dept. of Highways*, 225 A.2d 895 (Pa. 1967); *Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d* 461 A.2d 1234 (Pa. 1983).

Any decision of the Commission must be supported by substantial evidence. *See, e.g.*, 2 Pa.C.S. § 704; *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 (1993). “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. 1961); *Murphy v. Comm., Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

The burden of proof for high billing 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 Elec. 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 (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).

In this case, the Complainant disputes her bills for Unit 1 at the service address issued in December 2022 through February 2023, arguing that they are abnormally high and that the meter was not functioning properly. Tr. 11-12. However, she provided no evidence, other than her own personal beliefs and opinions, in support of her allegations. It is well established that regardless of how earnestly a complainant believes the complaint allegations to be true, personal opinions or perceptions do not constitute substantial evidence sufficient to sustain the burden of proof. *Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A. 2d 12 (1987).

PGW responded to the allegations by presenting credible evidence demonstrating that the meter for Unit 1 at the service address was installed in 2018 and, when tested in February 2023, was found to operate within acceptable norms.

Additionally, through its witness, Patricia Bernard, PGW was able to present credible evidence explaining that the increase in the Complainant’s bills during the disputed period could be attributed to the increase in the number of gas appliances that were operational in Unit 1 during the disputed period. As Ms. Bernard explained, the changes in the Complainant’s usage and billing, both increases and decreases, corresponded to changes in the number of operational appliances at the property. Tr. 67.

Simply stated, usage and billing was low when only one appliance was operational, i.e. at the time of PGW's visits on July 6, 2022 and February 16, 2024, and higher when three appliances were operational, i.e. at the time of PGW's February 13, 2023 visit. Tr. 67.

It is clear from the foregoing that the Complainant's bill was higher during the disputed period, not due to a defective meter, but because more gas appliances were operable during the disputed period. Based on the foregoing, I find that the Complainant has failed to carry her burden of proving that her gas bills are not correct as rendered and that she is not consuming the gas she is being charged for. Accordingly, the Complaint is dismissed in its entirety.

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. 2 Pa.C.S. § 704; *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).
4. In establishing whether a "high bill" has been demonstrated, while the accuracy of the meter is an important factor in resolving billing disputes, the Commission will also consider 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jacqueline Brisbane in *Jacqueline Brisbane v. Philadelphia Gas Works* at Docket No. C-2023-3044625 is dismissed in its entirety.
2. That Docket No. C-2023-3044625 be marked closed.

Date: December 11, 2024

_____/s/
Arlene Ashton
Administrative Law Judge