

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ernest L. Turner	:	
	:	
v.	:	F-2024-3049464
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants in part, and denies, in part, Ernest L. Turner’s Formal Complaint against Philadelphia Gas Works. In particular, this Initial Decision grants the portion of Mr. Turner’s Complaint requesting a payment arrangement. However, this Initial Decision denies the portion of the Complaint disputing the Delivery Charges assessed in accordance with Philadelphia Gas Works’ Commission-approved tariff.

HISTORY OF THE PROCEEDING

On May 30, 2024, Ernest L. Turner (Complainant or Mr. Turner) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In his Complaint, Mr. Turner alleges that the utility is threatening to shut off his gas service or has

already shut off his service. In addition, the Complainant alleged that the customers of PGW have been and are subject to “unfair and unjust price gouging through the Delivery Charges assessed by Philadelphia Gas Works,” which Mr. Turner claimed to be “approximately 290% More than the Actual Usage Charge.” Complaint ¶ 4. As relief, the Complainant requests that the Commission establish a payment arrangement for him and that it “Convene Pertinent Relevant Authorities to Restructure the Funding and charges for the market that it serves to accommodate a more Fair and Just business agreement between the Public and the provider.” Complaint ¶ 5.

This Complaint is a timely appeal of the informal decision issued by the Commission’s Bureau of Consumer Services at BCS Case No. 3973706. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On June 27, 2024, the Respondent filed an Answer and New Matter, along with a Notice to Plead. In its Answer, PGW denied the material allegations of the Complaint; whereas, in its New Matter, the Respondent averred that the challenge to PGW’s Delivery Charge and associated prayer for relief were impertinent matter as they exceeded the Commission’s powers because the Commission has no authority to allow a public utility to deviate from its tariff. New Matter ¶ 12. In addition, PGW averred that the challenge to PGW’s Delivery Charge was legally insufficient as it failed to support a claim that PGW violated a Commission regulation, statute, or order given that a public utility may not charge a rate other than the rates set forth in its tariff. New Matter ¶ 13. Lastly, PGW stated that the Complainant did not have the standing to represent other customers. New Matter ¶ 14.

Also on June 27, 2024, the Respondent filed Preliminary Objections to the Complaint. The Respondent sought dismissal of the Formal Complaint because: (1) the challenge to PGW’s Delivery Charge and associated prayer for relief were impertinent matter as they exceeded the Commission’s powers since the Commission has no authority to allow a public utility to deviate from its tariff; (2) the challenge to PGW’s Delivery

Charge was legally insufficient as it failed to support a claim that PGW violated a Commission regulation, statute, or order; and (3) Complainant did not have standing to represent other customers.

Complainant did not file a response to the Preliminary Objections.

By Motion Judge Assignment Notice, the Commission notified the parties that PGW's Preliminary Objections were assigned to me for disposition.

On September 18, 2024, I issued an Interim Order granting, in part, and denying, in part, PGW's Preliminary Objections. In particular, the Interim Order dismissed the portion of the Complaint purporting to raise claims or to represent the interest of other customers of PGW and set the matter for a hearing on the remaining issues.

An Initial Call-in Telephonic Hearing Notice dated September 20, 2024, notified the parties that an initial call-in telephone hearing was scheduled on December 17, 2024, at 10:00 a.m.

On October 22, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

The hearing was convened as scheduled on December 17, 2024. Mr. Turner appeared *pro se* and testified in support of the Complaint. He sponsored four exhibits (Complainant Exhibits A-D), which were admitted into the record. Graciela Christlieb, Esq. represented the Respondent and presented the testimony of Jessica Antonetti, who is a Senior Customer Review Officer with PGW. The Respondent sponsored four exhibits (PGW Exhibits 1-4), which were admitted into the record.

During the hearing, counsel for PGW requested permission to submit additional documents in support of Ms. Antonetti's testimony as late-filed exhibits. Tr. 51. The deadline for submitting late-filed exhibits was set for December 20, 2024. Tr. 56. The deadline for filing written objections to the late-filed exhibits was set for January 20, 2025. Tr. 57.

By email dated December 19, 2024, counsel for PGW submitted PGW late-filed Exhibits 5-8. As of the date of this Initial Decision, Mr. Turner has not submitted any written objections to PGW late-filed Exhibits 5-8, which will be admitted into the record pursuant to the Ordering Paragraphs below.

The record in this matter closed on January 21, 2025,¹ which was the due date for written objections to PGW late-filed Exhibits 5-8.

FINDINGS OF FACT

1. The Complainant is Ernest L. Turner who resides at 3744 North 18th Street, Philadelphia, PA 19140 (Service Address). Tr. 8-9.
2. The Respondent is Philadelphia Gas Works.
3. PGW presents its case for a rate increase to the Public Utility Commission and, following a process of litigation and review, the Commission decides on the appropriate rates to approve. Tr. 32-33; PGW late-filed Exhibits 5-8.

¹ January 20, 2025 was Martin Luther King Day, a federal holiday observed by the Commission.

4. PGW's Delivery Charges are assessed in compliance with the Company's Commission-approved tariff. Tr. 16.

5. The Total Delivery Charges reflected in a customer bill include PGW's Customer Charge, Distribution Charge, Distribution System Improvement Charge, and Gas Cost Adjustment. Tr. 48; PGW late-filed Exhibit 5.

6. Mr. Turner's household consists of three individuals: two adults and one teenager. Tr. 21.

7. Mr. Turner's sole income is \$47,000 per year from his full-time employment with the City of Philadelphia. Tr. 21.

8. During the period from December 2022 to December 2024, Mr. Turner made no payments to PGW. Tr. 30; PGW Exhibit 1.

9. The lack of payments in combination with late payment charges resulted in an outstanding balance of \$6,361.60 accumulated in Mr. Turner's account as of the date of the hearing. Tr. 29-30; PGW Exhibit 1.

10. Mr. Turner has not received a Commission-issued payment arrangement. Tr. 32; PGW Exhibit 3.

DISCUSSION

Legal Standards

General burden of proof

As the party seeking affirmative relief from the Commission, a complainant has the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence that is more convincing, by even the smallest amount, than that presented by the opposing party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail and that the offense is a violation of the Public Utility Code (Code), the Commission's regulations, or order. 66 Pa.C.S. § 701; *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Moore v. Nat'l Fuel Gas Distrib.*, Docket. No. C-2014-2458555 (Final Order entered Aug. 25, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party's claim or affirmative defense. *Id.* The burden of production may shift between the parties during a hearing. A complainant may establish a prima facie case with circumstantial evidence. *See, Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a prima facie case, the burden of production shifts to the utility to rebut the complainant's evidence. *See Moore.*

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant's burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant's claim. *See Milkie* at 1220; *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983) (*Burleson*).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie* at 1220; *see also, Riedel v. Cnty of Allegheny*, 633 A.2d 1325 (Pa. Cmwlth. 1993); *Burleson* at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See, Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore* (citing *Suber v. Pa. Comm'n on Crime & Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005)).

Additionally, any decision of the Commission must be supported by substantial evidence in the record; more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. 2 Pa.C.S. § 704; *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Delivery Charges

In his Formal Complaint, Mr. Turner alleged that he, as a customer of PGW, has been the subject of unfair and unjust price gouging through the delivery charge, which Mr. Turner assessed to be “approximately 290% More than the Actual Usage Charge.” Complaint ¶ 4. As relief, Mr. Turner requested that the Commission “[c]onvene Pertinent Relevant Authorities to Restructure the Funding and charges for the market that it serves to accommodate a more Fair and Just business agreement between the Public and the provider.” Complaint ¶ 5.

The Interim Order on PGW’s Preliminary Objections explained that tariff provisions previously approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm’n*, 437 A.2d 1067 (Pa. Cmwlth. 1981). A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. Interim Order at 4, *citing Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm’n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

The Interim Order further explained that Mr. Turner’s challenge to PGW’s Delivery Charge carries a heavy burden of proof. In order for him to prevail on this claim, Mr. Turner had to prove by a preponderance of the evidence that the facts and circumstances leading to the Commission’s approval of PGW’s current Delivery Charge have changed so drastically as to render the application of the tariff provision unreasonable. Interim Order at 4-5 (citing *Sattar v. Aqua Pa., Inc.*, Docket No. C-2010-2169756 (Order entered July 28, 2012)).

At the hearing, Mr. Turner testified that PGW’s delivery charge is 100% higher than its supply charge. Tr. 10. He considers the charges egregious and objects to

paying more than double for the same product. Tr. 11-13. To substantiate his claim, Mr. Turner used his PGW bill covering the period from October 17, 2022, to November 15, 2022, in which the Total Supply Charges were listed as \$104.59, and the Total Delivery Charges were \$172.23. Tr. 13; Complainant Exhibit D. Next, Mr. Turner used his PGW bill covering the period from December 17, 2022, to January 14, 2023, in which the Total Supply Charges were listed as \$336.53, and the Total Delivery Charges were \$465.97, for a total bill of \$802.50. Tr. 16; Complainant Exhibit D. Mr. Turner admitted that the Delivery Charges in question were assessed in compliance with PGW's Commission-approved tariffs. Tr. 16.

In response, PGW put forth the testimony of Ms. Antonetti, who testified that PGW presents its case for a rate increase to the Public Utility Commission and, following a process of litigation and review, the Commission decides on the appropriate rates to approve. Tr. 32-33. PGW then charges its customers in accordance with the rates in its Commission-approved tariff. Using the May 2024 bill (covering the period April 15, 2024, to May 14, 2024) which Mr. Turner referenced in his Formal Complaint, Ms. Antonetti explained that the Delivery Charges for Mr. Turner's May 2024 bill were assessed in accordance with PGW's Supplement No. 170 to Gas Service Tariff – Pa P.U.C. No. 2 which became effective on March 1, 2024. The Commission Order which approved that supplement was entered on July 13, 2023, in *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-2023-3038069. Tr. 48, PGW late-filed Exhibits 5-8. Ms. Antonetti further explained that the current Delivery Charges were approved by the Commission pursuant to its Order entered on July 11, 2024, in *Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-2024-3045966. Tr. 70. She further testified that Mr. Turner's May 2024 gas bill includes Total Supply charges in the amount of \$7.43, and Total Delivery Charges in the amount of \$32.94. Tr 48-51; PGW late-filed Exhibit 5. The Total Delivery Charges include PGW's Customer Charge of \$16.25, the Distribution

Charge² in the amount of \$15.23, the Distribution System Improvement Charge of \$2.36, and Gas Cost Adjustment as a credit of \$0.90. Tr. 48; PGW late-filed Exhibit 5.

As mentioned above, Mr. Turner admitted that the Delivery Charges reflected in his gas bills were assessed in compliance with PGW's Commission-approved tariffs. Tr. 16. In addition and to the extent that he is seeking to evade the full effect of PGW's Delivery Charges, Mr. Turner did not show that the facts and circumstances leading to the creation of the tariff provisions regarding the Delivery Charges have changed at all, let alone having changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996). In view of this, I find that Mr. Turner has failed to carry the heavy burden of proving that PGW's Delivery Charges are unreasonable.

Payment arrangement

Mr. Turner testified that his household consists of three individuals, two adults and one teenager. Tr. 21. Mr. Turner's gross household income is \$47,000 per year from his full-time employment with the City of Philadelphia. Tr. 21.

In response, Ms. Antonetti testified that Mr. Turner has a poor payment history with the Respondent. During the period December 2022 to December 2024, Mr. Turner made no payments to PGW. Tr. 30; PGW Exhibit 1. The lack of payments in combination with late payment charges resulted in an outstanding balance of \$6,361.60 accumulated in his account as of the date of the hearing. Tr. 29-30; PGW Exhibit 1. Ms. Antonetti further explained that, although he has received and defaulted on several

² The Distribution Charge itself is made up of several other surcharges which are given a financial value per one hundred cubic feet of gas (CCF). Those surcharges include the Universal Service and Energy Conservation Surcharge, the Efficiency Cost Recovery Surcharge, and other post-employment benefits surcharges. Tr. 49-50.

Company-issued payment arrangements, Mr. Turner has not received a Commission-issued payment arrangement. Tr. 32; PGW Exhibit 3.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401–1419, applied to complaints alleging inability to pay and requesting a Commission-issued payment arrangement at the time of the hearing. This law provided strict guidelines that the Commission had to follow when determining whether a payment arrangement could be issued and the length of the payment arrangement. I note that Chapter 14 has subsequently sunset, effective December 31, 2024, according to its provisions, and is not currently in effect.³

However, in its Statement of Policy entered December 24, 2024, the Commission clarified that its regulations codified at 52 Pa. Code Chapter 56 shall remain in effect until amended. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024). With regard to the provision of payment arrangements, the Commission explained that it will maintain its application of the four-tiered process establishing the length of payment arrangements previously articulated in Chapter 14. *Id.* at 4. In particular, the Commission’s Statement of Policy states that the principles of Section 1405 and definitions of Section 1403 will continue after the expiration of Chapter 14 on December 31, 2024. *Id.* at 5. Thus, consistent with Chapter 14, utility customers will be eligible for one payment arrangement on arrearages accrued while not on a customer assistance program under such terms, subject to a change in income or a significant change in circumstance as again outlined in the existing statute. *Id.* at 5, n.3, citing 66 Pa.C.S. § 1405(c).

³ Nevertheless, since this action arose prior to the sunset of Chapter 14, its substantive effect still applies to this action. *Ghaderi v. St. Bd. of Osteopathic Med.*, 302 A.3d 240 (Pa. Cmwlth. 2023); *Miegoc v. W.C.A.B.*, 961 A.2d 269 (Pa. Cmwlth. 2008).

As Chapter 14 required, the length of time for a customer to resolve an unpaid balance 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.

Statement of Policy entered Dec. 24, 2024, at 4, citing 66 Pa.C.S. § 1405(b).

With a gross household income of \$47,000 per year for a household of three, Mr. Turner's household is between 180% and 185% of the Federal poverty level.⁴ While Mr. Turner has had a poor payment history with PGW, he has never received a payment arrangement from the Commission. Consequently, Mr. Turner will be awarded a payment arrangement requiring him to make monthly payments consisting of his budget bill, plus one thirty-sixth ($1/36^{\text{th}}$) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

⁴ See Federal poverty guidelines, 90 Fed. Reg. 5917 (Jan. 17, 2025); <https://aspe.hhs.gov/sites/default/files/documents/dd73d4f00d8a819d10b2fdb70d254f7b/detailed-guidelines-2025.pdf>

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. 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).
4. 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. 2 Pa.C.S. § 704. 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).
5. Tariff provisions previously approved by the Commission are *prima facie* reasonable. *Zucker v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).
6. A complainant seeking to evade the effect of an existing tariff provision carries a very heavy burden of proving that the facts and circumstances leading to the creation of the tariff provision have changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

7. The facts and circumstances leading to the creation of the tariff provisions concerning PGW's Delivery Charges have not changed so drastically as to render the application of the tariff provision unreasonable. *Shenano Twp. Bd. of Supervisors v. Pa. Pub. Util. Comm'n*, 686 A.2d 910 (Pa. Cmwlth. 1996).

8. Following the sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code, the Commission's regulations codified at 52 Pa. Code Chapter 56 shall remain in effect until amended. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328 (Statement of Policy entered Dec. 24, 2024).

9. Following the expiration of Chapter 14 of the Pennsylvania Public Utility Code on December 31, 2024, the Commission will maintain its application of the four-tiered process establishing the length of payment arrangements previously articulated in Chapter 14. *See Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328, at 4 (Statement of Policy entered Dec. 24, 2024).

10. The principles of Section 1405 and definitions of Section 1403 of the Pennsylvania Public Utility Code will continue after the expiration of Chapter 14 on December 31, 2024. *Sunset of Chapter 14, Title 66 of the Pennsylvania Public Utility Code*, Docket No. M-2024-3052328, at 5 (Statement of Policy entered Dec. 24, 2024).

11. The Complainant has carried his burden of proving that he is entitled to a Commission-issued payment arrangement on his outstanding balance. 66 Pa.C.S. § 332(a).

12. The Complainant has failed to carry his burden of proving that the Delivery Charges assessed in accordance with Philadelphia Gas Works' Commission-approved tariff is unreasonable. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' late-filed Exhibits 5-8 are admitted into the record in this matter.

2. That the Formal Complaint of Ernest L. Turner in *Ernest L. Turner v. Philadelphia Gas Works* at Docket No. F-2024-3049464 is granted, in part, and denied, in part.

3. That the Formal Complaint is denied as to Ernest L. Turner's dispute of the Delivery Charges assessed in accordance with Philadelphia Gas Works' Commission-approved tariff.

4. That the Complaint is granted as to Ernest L. Turner's request for a payment arrangement.

5. That Ernest L. Turner shall make monthly payments consisting of his current charges or budget bill, plus one thirty-sixth (1/36th) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.

6. That, so long as Ernest L. Turner adheres to the terms of this Order, Philadelphia Gas Works shall not assess any late payment charges nor shall Philadelphia

