

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Winston Banks	:	
	:	
v.	:	F-2024-3050882
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint of a gas utility customer because the customer failed to meet his burden of proving that the utility failed to properly credit his account for payments made.

HISTORY OF THE PROCEEDING

On August 6, 2024, Winston Banks (“Mr. Banks” or “Complainant”) filed a Formal Complaint (“Complaint”) against Philadelphia Gas Works (“PGW” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”), alleging that there were incorrect charges on his bills. For relief, Mr. Banks requested that the Commission “review the account at 2001 Kinsey Street and reconcile/adjust the actual usage in regards to the payments made.” Complaint ¶ 5. Attached to the Complaint is a handwritten note containing payment and billing information for Mr.

Banks' monthly PGW bills ranging from bills issued in 2020 to bills issued in 2024. Also attached to the Complaint are Mr. Banks' PGW bills issued on the following dates: December 19, 2020; January 22, 2021; August 19, 2021; September 21, 2021; November 19, 2021; December 21, 2021; January 22, 2022; September 20, 2022; and June 15, 2024. The Complaint was served on PGW on August 26, 2024.¹

On September 16, 2024, PGW filed an Answer with New Matter. In its Answer, PGW denied that there were incorrect charges on Complainant's bill. In its New Matter, properly endorsed with a Notice to Plead, PGW asserted that portions of the Complaint attempt to litigate issues that arose prior to August 6, 2021. Those issues, PGW argued, are barred by the statute of limitations, at 66 Pa.C.S. § 3314.²

Also on September 16, 2024, PGW filed Preliminary Objections to the Complaint. In its Preliminary Objections, PGW asserted that pursuant to 52 Pa. Code § 5.101(a)(1) the Commission lacks jurisdiction over portions of the Complaint. PGW argued that the Complaint raises issues regarding the accuracy of bills issued prior to August 6, 2021, and that such issues fall outside the applicable statute of limitations and is barred under 66 Pa.C.S. § 3314. PGW concluded its Preliminary Objections by requesting that the Commission dismiss issues raised in the Complaint that are beyond the statute of limitations.

¹ The Complaint is a timely appeal of a decision by the Commission's Bureau of Consumer Services ("BCS") at BCS No. 3987571. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

² **"General rule.--**No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part." 66 Pa.C.S. § 3314(a).

On October 3, 2024, Mr. Banks filed an Answer to PGW's Preliminary Objections. Mr. Banks' Answer is not responsive to the Preliminary Objections but instead contains a list of questions directed to PGW's customer service concerning Mr. Banks's account.

On October 10, 2024, Mr. Banks filed a Reply to PGW's New Matter. In his Reply Mr. Banks argued that he did not raise any challenges to bills more than three years old but also argued that since December 2020 to July 2024 he has paid \$14,105.33 towards the total billing from PGW of \$15,828.77.

On October 23, 2024, the Commission issued a Motion Judge Assignment Notice, assigning me as Presiding Officer over this proceeding.

On October 25, 2024, the Commission issued my Order Granting Preliminary Objections. In my Order I granted the Preliminary Objections and barred the claims in the Complaint regarding any alleged incorrect billing that occurred prior to May 16, 2021.³ As the granting of the Preliminary Objections did not result in dismissal of the Complaint in its entirety, the Order indicated that an evidentiary hearing would be scheduled.

On October 28, 2024, the Commission issued an Initial Telephonic Hearing Notice, scheduling an evidentiary hearing for this matter for January 14, 2025.

³ May 16, 2021, is three years prior to the filing of the Informal Complaint with BCS. The filing of the Informal Complaint with the Commission tolled the statute of limitations. *See Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 611 A.2d 370 (Pa. Cmwlth. 1992).

On November 5, 2024, Mr. Banks filed a Petition for Extension of Time wherein he requested a brief continuance in order to complete his response to my Order Granting Preliminary Objections.⁴

On November 26, 2024, the Commission issued my Prehearing Order, which provided the procedural rules that would govern the evidentiary hearing.

On December 2, 2024, the Commission issued my Order Denying Petition for Extension of Time.

On January 14, 2025, the evidentiary hearing was held as scheduled. Mr. Banks was present, testified in support of his Complaint, and sponsored three exhibits that were admitted into the record (Banks Exhibit 1-3). Anita Murray, Esquire, represented PGW in this proceeding and presented the testimony of Patricia Bernard who sponsored five exhibits that were admitted into the record (PGW Exhibits 1-5).

On January 20, 2025, a 59-page electronic transcript was filed with the Commission. The record closed on this date.

This matter is ready for resolution. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. Complainant is Winston Banks.

⁴ On the same date, PGW submitted an Objection to Mr. Banks's Petition. This Objection was not filed with the Commission.

2. Respondent is Philadelphia Gas Works.
3. Mr. Banks uses a cash checking agency to pay his PGW gas bills and PGW generally receives the payments within one to two days. Tr. 18, 19.
4. Mr. Banks made a payment on July 14, 2021, in the amount of \$357 towards his PGW account. Tr. 20.
5. Mr. Banks made a payment on September 14, 2021, in the amount of \$364 towards his PGW account. Tr. 20.
6. Mr. Banks made a payment on October 23, 2021, in the amount of \$364 towards his PGW account. Tr. 19.
7. Mr. Banks made a payment on December 13, 2021, in the amount of \$383 towards his PGW account. Tr. 18-19.
8. PGW Exhibit 2 is Mr. Banks's statement of account for gas service rendered to Mr. Banks's service address from May 17, 2021, to January 7, 2025. Tr. 33 34; PGW Exhibit 2.
9. Mr. Banks's payment made on July 14, 2021, of \$357 was credited towards his account on July 15, 2021. Tr. 36; PGW Exhibit 2, p. 5.
10. Mr. Banks's payment made on September 14, 2021, of \$364 was credited towards his account on September 15, 2021. Tr. 37; PGW Exhibit 2, p. 5.
11. Mr. Banks's payment made on October 23, 2021, of \$364 was credited towards his account on October 25, 2021. Tr. 37-38; PGW Exhibit 2, p. 5.

12. Mr. Banks's payment made on December 13, 2021, in the amount of \$383, was credited towards his account on January 5, 2022. Tr. 38; PGW Exhibit 2, p. 1.

13. Mr. Banks's statement of account contains two service agreements, one agreement number ending in 31 and the other agreement number ending in 17. Tr. 34; PGW Exhibit 2.

14. Mr. Banks's statement of account contains two service agreements because he had an alternative gas supplier in 2021, and the service agreement number ending in 17 represents the service provided to Mr. Banks while he had an alternative gas supplier. Tr. 34-35.

15. The statement of account shows that Mr. Banks's payments made on July 14, 2021, September 14, 2021, and October 23, 2021, were credited to the service agreement number ending in 17. PGW Exhibit 2, p. 5.

16. The payment Mr. Banks made on December 13, 2021, was credited to the service agreement number ending in 31. PGW Exhibit 2, p. 1.

17. When a statement of account contains more than one service agreement, payments are first credited to the oldest service agreement, which in this case was the service agreement number ending in 17. Tr. 46.

18. Mr. Banks's account balance at the time of the hearing was \$6,020.06, which is an accumulation of unpaid bills and late charges on his account. Tr. 40.

DISCUSSION

Legal Standards

General Burden of Proof

The Public Utility Code (“Code”) places the burden of proof upon the proponent of a rule or order. 66 Pa.C.S. § 332(a). As the proponent of a rule or order, Complainant has the burden of proof in this matter. *Id.*

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that Respondent 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. 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). 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. 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 her 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. Cmwlt. 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. Cmwlt. 2001).

Unreasonable service

Section 1501 of the Code, provides, in pertinent part, that a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service and facilities” and to make “repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa.C.S. § 1501. The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. 66 Pa.C.S. § 102.

Analysis

In this matter, Mr. Banks complains of making payments towards his PGW gas account that were not properly credited. At the hearing, he cited the following four instances where he allegedly made payments to his account that were not credited by PGW.

- A payment on July 14, 2021, in the amount of \$357. Tr. 20.
- A payment on September 14, 2021, in the amount of \$364. Tr. 20.
- A payment on October 23, 2021, in the amount of \$364. Tr. 19.
- A payment on December 13, 2021, in the amount of \$383. Tr. 18-19.

Mr. Banks testified that he uses a check cashing agency to make his payments to PGW and that PGW generally receives the payments within one to two days. Tr. 18-19. I find Mr. Banks's testimony that he made payments towards his PGW account on the dates and in the amounts indicated above credible.

PGW presented the testimony of Patricia Bernard, a customer review officer employed by PGW. Tr. 31. Ms. Bernard sponsored the statement of account for Mr. Banks, which was admitted into the record at the hearing. Ms. Bernard testified that all four of the payments highlighted by Mr. Banks were in fact credited towards his account as follows:

- The payment made on July 14, 2021, of \$357 was credited towards Mr. Banks's account on July 15, 2021. Tr. 36; PGW Exhibit 2, p. 5.
- The payment made on September 14, 2021, of \$364 was credited towards Mr. Banks's account on September 15, 2021. Tr. 37; PGW Exhibit 2, p. 5.

- The payment made on October 23, 2021, of \$364 was credited towards Mr. Banks's account on October 25, 2021. Tr. 37-38; PGW Exhibit 2, p. 5.
- The payment made on December 13, 2021, in the amount of \$383, was credited towards Mr. Banks's account on January 5, 2022. Tr. 38; PGW Exhibit 2, p. 1.

Ms. Bernard also testified that Mr. Banks's statement of account contains two service agreements, one agreement number ending in 31 and the other agreement number ending in 17. Tr. 34; PGW Exhibit 2. Mr. Banks's statement of account contains two service agreements because he had an alternative gas supplier back in 2021, and the service agreement number ending in 17 represents service provided to Mr. Banks while he had an alternative gas supplier. Tr. 34-35. The statement of account shows that Mr. Banks's payments made on July 14, 2021, September 14, 2021, and October 23, 2021, were credited to the service agreement number ending in 17. PGW Exhibit 2, p. 5. The payment made on December 13, 2021, was credited to the service agreement number ending in 31. PGW Exhibit 2, p. 1. When a statement of account contains more than one service agreement payments are first credited to the oldest service agreement, which in this case was the service agreement number ending in 17. Tr. 46.

Clearly, Mr. Banks's evidence was rebutted by PGW's evidence. PGW provided credible evidence that the payments that Mr. Banks testified as not having been credited towards his account were in fact properly credited. Mr. Banks did not meet his burden of proving that the four payments he highlighted, or that any other payments, failed to be credited to his account. As such, Mr. Banks failed to meet his burden of proving, by a preponderance of the evidence, that PGW is responsible or accountable for the problem described in the Complaint. As Mr. Banks failed to meet his burden of proof, his Complaint will be dismissed in the Ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on Complainant. 66 Pa.C.S. § 332(a).

3. To establish a sufficient case and satisfy the burden of proof, the Complainant must show that Respondent 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).

4. 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).

5. Section 1501 of the Code, provides, in pertinent part, that a public utility has a duty to maintain "adequate, efficient, safe, and reasonable service and facilities" and to make "repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa.C.S. § 1501.

6. The term "service" is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. 66 Pa.C.S. § 102.

7. By not proving that Respondent failed to properly credit his account for payments made, Complainant failed to meet his burden of proving that Respondent is responsible or accountable for the problem described in the Complaint. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Winston Banks in the matter of Winston Banks v. Philadelphia Gas Works, Docket No. F-2024-3050882, is dismissed.
2. That the Secretary's Bureau shall mark Docket No. F-2024-3050882 as closed.

Date: April 21, 2025

_____/s/
Alphonso Arnold III
Administrative Law Judge