

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steve Frempong

v.

Philadelphia Gas Works

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C-2025-3052754

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Steve Frempong because he failed to sustain his burden of proving by a preponderance of the evidence that his gas bills from Philadelphia Gas Works were incorrect because his meter was inaccurate.

HISTORY OF THE PROCEEDING

On December 30, 2024, Steve Frempong (Complainant or Mr. Frempong) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission) alleging that PGW is threatening to shut off his gas service and that his bills from PGW are abnormally high.

On January 22, 2025, the Respondent filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

An Initial Call-in Telephonic Hearing Notice dated January 24, 2025, notified the parties that an initial call-in telephone hearing was scheduled on March 28, 2025, at 10:00 a.m., and that the matter was assigned to me.

On January 27, 2025, I issued a Prehearing Order directing the parties to comply with various procedural requirements, reminding them of the time and date of the hearing and providing instructions for calling in to the hearing.

On March 21, 2025, Mr. Frempong submitted a written request for a continuance of the scheduled hearing citing a scheduling conflict with a hearing in front of the Tax Review Board for the City of Philadelphia. By email dated March 21, 2025, counsel for PGW indicated that Respondent did not object to a one-time request for continuance.

By Order issued March 26, 2025, I granted the Complainant's request.

A Cancellation/Reschedule Notice dated March 26, 2025, notified the parties that the initial call-in telephone hearing was rescheduled for May 21, 2025, at 10:00 a.m.

The hearing convened as scheduled on May 21, 2025. Mr. Frempong appeared *pro se* and testified in support of his Complaint. Tracy Tripp, Esq. appeared on behalf of the Respondent and presented the testimony of Patricia Bernard, who is a Customer Review Officer with PGW in charge of investigating Informal and Formal Complaints filed with the Commission. The Respondent

sponsored nine exhibits which were admitted into the record (PGW Exhibits 1-7 and PGW Exhibits 9-10).

The evening prior to the hearing, PGW submitted an updated version of PGW Exhibit 2. Mr. Frempong requested additional time to review the content of PGW Exhibit 2 – the Account Statement of Steve Frempong. I granted Mr. Frempong’s request and provided him with a deadline of June 18, 2025, to file written objections to the admission of this exhibit into the record.

In addition, Mr. Frempong requested information about the calibration of PGW’s meters. This was information that Mr. Frempong should have requested from the Company during discovery. However, recognizing Mr. Frempong’s status as a *pro se* Complainant, I asked PGW to produce, as a late-file exhibit, documents regarding PGW’s policy on meter calibration as well as information on the calibration of the gas meter serving Mr. Frempong’s residence. PGW submitted timely the requested documents on June 11, 2025. This exhibit will be marked for identification as PGW late-filed Exhibit 11.

On June 18, 2025, the Complainant filed written objections to the admission of PGW late-filed Exhibit 11. No objections were filed regarding PGW Exhibit 2 which will be admitted into the record in accordance with the ordering paragraphs below.

The record closed upon the receipt of Mr. Frempong’s objection on June 18, 2025.

FINDINGS OF FACT

1. The Complainant is Steve Atuahene Frempong who resides at 920 East Price Street, Philadelphia, PA 19138 (Service Address). Tr. 8, 13.

2. The Respondent is Philadelphia Gas Works.

3. Mr. Frempong and his wife are the sole occupants of the Service Address. Tr. 46.

4. The gas range is the only operational gas appliance at the Service Address. Tr. 11, 28.

5. Mr. Frempong and his wife use the gas range to cook one or two meals each day. Tr. 11.

6. On March 6, 2024, PGW installed gas Meter # 2356468 at the Service Address and turned on gas service at the property in Mr. Frempong's name. Tr. 46.

7. At the time of the installation, Meter # 2356468 was new and showed a dial index of 0 CCF. Tr. 47-48, PGW Exhibits 1, 2.

8. At the time of the installation of Meter # 2356468, the PGW field technician noted that the gas house heater and water heater at the property were inoperable. PGW Exhibit 1.

9. On December 30, 2024, Mr. Frempong filed the present Complaint against PGW challenging the accuracy of his meter and his gas bills.

10. After the filing of the present Complaint, PGW scheduled a meter exchange to test the accuracy of Meter #2356468. Tr. 15-16.

11. Meter # 2356468 was removed from the Service Address on January 17, 2025, and Meter # 2346623 was installed in its place. PGW Exhibit 4.

12. At the time of its installation, Meter # 2346623 was new and showed a dial index of 0 CCF. Tr. 48; PGW Exhibits 4, 2.

13. The field technician who visited the Service Address to exchange the meters on January 17, 2025, reported that the gas water heater and house heater at the property were shut off at the gas valve and were inoperable. PGW Exhibit 4.

14. Following its removal from the Service Address, Meter # 2356468 was tested at PGW's facilities on January 21, 2025. Tr. 16; PGW Exhibit 5.

15. The results of the test indicated that Meter # 2356468 was 1% slow and well within the $\pm 2\%$ margin of error allowed by the Commission's regulation at 52 Pa. Code § 59.22. Tr. 16; PGW Exhibit 5.

16. By letter dated January 21, 2025, PGW informed the Complainant that Meter # 2356468 was tested and was found to be within the acceptable levels of $\pm 2\%$ accuracy.

17. The letter dated January 21, 2025, informed Mr. Frempong that he was not entitled to any refund or credit. PGW Exhibit 5.

18. From March 2024 to May 2025 all of Mr. Frempong's gas bills were based on actual readings except the bill issued on January 23, 2025. Tr. 18.

19. The PGW bill issued on January 23, 2025, was based on estimated readings following the meter exchange at the Service Address on January 17, 2025. Tr. 18-19.

20. Any errors in estimates were corrected in the next bill issued February 20, 2025, which was based on actual readings received from Mr. Frempong's meter. Tr. 20-23, 26; PGW Exhibit 2.

21. Mr. Frempong's Account Statement with PGW reveals the following usage history:

Bill Date	Days of Service	CCF	Bill Date	Days of Service	CCF
3/20/2024	12	9	3/21/2025	29	19
4/19/2024	30	14	4/22/2025	29	15
5/18/2024	29	8			
6/19/2024	32	9			
7/19/2024	30	8			
8/17/2024	29	8			
9/19/2024	33	10			
10/18/2024	29	10			
11/20/2024	33	16			
12/19/2024	29	19			
1/23/2025 ^{1*}	35	48*			
2/20/2025*	28	8*			

PGW Exhibit 2. (Emphasis added).

¹ The gas bills issued on January 23, 2025, and February 20, 2025, were affected by the exchange of Meter # 2356468 on January 17, 2025. The January 23, 2025, bill was estimated, whereas the bill issued on February 20, 2025, reflects the correction on the estimates once an actual reading was received from the new meter.

22. Pursuant to PGW's Accepting Testing Procedure for New Meters, for each shipment of new meters received, a minimum of 10% or ten (10) meters whichever is greater will be tested for accuracy and leakage. PGW late-filed Exhibit 11.

DISCUSSION

Preliminary Matter – PGW Late-Filed Exhibit 11

As a preliminary matter, I shall address Mr. Frempong's objections to PGW's late-filed Exhibit 11. This Exhibit consists of the notarized affidavit of Kyle Bamberski, who is a Supervisor in PGW's Field Services Department. The affidavit is accompanied by three documents: Exhibit A – Acceptance Testing Procedure for New Meters; Exhibit B – Meter Testing Procedure on Sonic Nozzle Provers; Exhibit C – ADIS, Meter Age Cut-off.

Mr. Frempong objects to the admission of PGW late-filed Exhibit 11 into the record in this case because the statements contain therein do not comply with the provisions of 49 CFR § 192 (Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards) and 52 Pa. Code § 59.21 (Meter tests), 52 Pa. Code § 59.22 (Adjustment of bills for meter error), 52 Pa. Code § 59.23 (Disputed Bills), and 52 Pa. Code § 59.24 (Access to meters and discontinuance of service).²

Mr. Frempong objection is akin to a factual or legal argument of the case. It does not present a legally recognized ground for excluding evidence from the record. *See* 52 Pa Code § 5.401 (Admissibility of Evidence). Consequently, I shall overrule Mr.

² If that is indeed the case, Mr. Frempong should encourage the admission of PGW late-filed Exhibit 11 into the record.

Frempong's objection to the admission of PGW late-filed Exhibit 11 and admit said Exhibit into the record.

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).

High Billing Dispute

In *Waldron v. Philadelphia Electric Co.*, (*Waldron*), 54 Pa.P.U.C. 98 (1980), the Commission adopted the Michigan Public Service Commission's (PSC's) policy

announced in *Hallifax v. O & A Electric 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 Michigan PSC 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.

While a comparison of the disputed monthly bill to the Complainant's billing history and the consistency of his usage pattern are important criteria to consider, they alone do not resolve the issue of the Complainant's disputed high bill. *Waldron* does not limit the establishment of a prima facie case to the above two elements alone. Rather, the Commission may consider 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. See *Bennett v. Peoples Nat. Gas Co.*, Docket No. C-2009-2122979 (Opinion and Order entered Oct. 13, 2010); *Thomas v. PPL Elec. Utils. Corp.*, Docket No. C-2010-2187197 (Opinion and Order entered Nov. 15, 2011).

Thus, a complainant in a high bill case has the opportunity to present any other relevant evidence which, if sufficient to establish a prima facie case, can be used to sustain the burden of proof. There is no specific requirement as to what particular facts the complainant must offer. This will likely vary from case to case. In *Waldron*, for example, the complainant did not provide a comparison of prior billing, but asserted that the apartment was uninhabited during the billing period in question and that the only operating appliances were a clock and a refrigerator; that two air conditioners were disconnected; and that, even if the latter had been connected, the complainant could not possibly have used the energy reflected in the billing. The Commission remanded the complaint in *Waldron* reasoning that, had the record been properly developed, those facts

may have established a prima facie high bill case, and then the Company would have had to introduce evidence to overcome the prima facie case. *Waldron* at 101. Therefore, to establish a prima facie case under *Waldron*, a complainant must show the disputed bill was abnormally high when compared to prior usage patterns and that his or her pattern of usage has not changed or must provide other relevant evidence showing that the disputed bill is unreasonably high.

As set forth in *Waldron*, evidence proffered by a utility relating to the accuracy of a meter test alone, in response to a high bill complaint, is not conclusive evidence and would not, by itself, require a finding against a complainant and in favor of a company. *Id.* In other words, evidence of a meter test showing that the meter worked within the acceptable degree of accuracy can be overcome with circumstantial evidence that otherwise indicates that a bill was too high.

At the hearing, Mr. Frempong challenged the accuracy of his gas meter and gas bills from PGW. He testified that he and his wife moved to the Service Address in March of 2024 and explained that they are the only individuals that reside there. Tr. 10, 46. Mr. Frempong testified that the only gas appliance at the Service Address is a gas oven that they use for cooking their meals once or twice a day. Tr. 11. Mr. Frempong testified that, despite their usage patterns and cooking habits, the gas bills from PGW vary from month to month and are abnormally high. Tr. 11-12.

During cross-examination, Mr. Frempong explained that his middle name is Atuahene and that he does not have any other residences. Tr. 13. He also explained that since the day he moved into the Service Address he had made no changes to it. When asked whether he had replaced appliances, windows or the like, Mr. Frempong replied that “[t]here have been improvements [at the Service Address] but nothing significant.” Tr. 45-46.

In response, PGW presented the testimony of Patricia Bernard, who testified that on March 6, 2024, PGW installed gas meter # 2356468 at the Service Address and turned on gas service at the property in Mr. Frempong's name. Tr. 46. At the time of the installation, Meter # 2356468 was new showing a dial index of 0 CCF. Tr. 47-48, PGW Exhibits 1, 2. At the time of the installation of Meter # 2356468, the PGW field technician noted that the gas house heater and water heater at the property were inoperable. PGW Exhibit 1.

Immediately after the filing of the present Complaint, PGW scheduled a meter exchange to test the accuracy of Meter #2356468. Tr. 15-16. Meter #2356468 was removed from the Service Address on January 17, 2025, and Meter # 2346623 was installed in its place. PGW Exhibit 4. At the time of its installation, Meter # 2346623 was new and showed a dial index of 0 CCF. Tr. 48; PGW Exhibits 4, 2. The field technician who visited the Service Address to exchange the meters on January 17, 2025, reported that the gas water heater and house heater at the property were shut off at the gas valve and were inoperable. PGW Exhibit 4. He noted in his record that the only gas appliance at the Service Address was the gas stove and that the "property [was] being rehabbed." PGW Exhibit 4.

Following its removal from the Service Address, Meter #2356468 was tested at PGW's facilities on January 21, 2025. Tr. 16; PGW Exhibit 5. The results of the test indicated that the meter was accurate. Tr. 16; PGW Exhibit 5. More specifically, the test results showed that Meter # 2356468 was 1% slow and well within the $\pm 2\%$ margin of error allowed by the Commission's regulation at 52 Pa. Code § 59.22. PGW Exhibit 5.

By letter dated January 21, 2025, PGW informed the Complainant that Meter # 2356468 was tested and was found to be within the acceptable levels of $\pm 2\%$ accuracy. Consequently, the letter informed Mr. Frempong that he was not entitled to any refund or credit. PGW Exhibit 5.

Ms. Bernard testified that from March 2024 to May 2025 all of Mr. Frempong’s gas bills were based on actual readings. The only exception is the bill issued on January 23, 2025. Tr. 18. This bill is based on estimated readings following the meter exchange at the Service Address on January 17, 2025. Tr. 18-19. Ms. Bernard explained that any errors in estimates were corrected in the next bill issued February 20, 2025, which was based on actual readings received from Mr. Frempong’s meter. Tr. 20-23, 26; PGW Exhibit 2.

Mr. Frempong’s Account Statement with PGW reveals the following usage history:

Bill Date	Days of Service	CCF	Bill Date	Days of Service	CCF
3/20/2024	12	9	3/21/2025	29	19
4/19/2024	30	14	4/22/2025	29	15
5/18/2024	29	8			
6/19/2024	32	9			
7/19/2024	30	8			
8/17/2024	29	8			
9/19/2024	33	10			
10/18/2024	29	10			
11/20/2024	33	16			
12/19/2024	29	19			
1/23/2025*	35	48*			
2/20/2025*	28	8*			

PGW Exhibit 2. (Emphasis added).

At the hearing, Mr. Frempong challenged the accuracy of PGW's meters, arguing that billing months with the same number of days should not have different CCF usage. *See* Tr. 29-30. He argued that, because the only appliance in question is the gas range, the outside temperature is irrelevant to the analysis of gas consumption. Tr. 28. Even if we accept as true this dubious premise for which Mr. Frempong provided no scientific basis, the gas usage history at the Service Address still does not support Mr. Frempong's claim of meter inaccuracy. Mr. Frempong's gas usage reflected in his March 2024 bill, when prorated by the number of days, is very close to his usage in his March 2025 bill, although these usages were recorded by two different meters. PGW Exhibit 2. Similarly, Mr. Frempong's gas usage and number of days reflected in his April 2024 bill are very close to those reported in his April 2025 bill, although these usages were again recorded by two different meters. *Id.* Even more telling, the usage and number of days reflected in his December 2024 bill is identical to the usage and number of days in his March 2025 bill, although these usages were recorded by two different meters. *Id.*

Although Mr. Frempong's usage history at the Service Address is not very long, a careful review of PGW Exhibit 2 indicates that his gas usage is comparable from month to month throughout the 14 months we have on the record. To demand exact usage from month to month, Mr. Frempong would have to show that he and his wife cooked the same type and same amount of food, for the same amount of time, every single day of every single month. Other than testifying that they use the gas range to cook one or two meals a day, Mr. Frempong did not show the same level of exactness that he seeks from his gas bills. *See* Tr. 30.

Finally, Mr. Frempong challenged the accuracy of Meter # 2356468 not only based on the meter test results but also on PGW's calibration records, practices and procedure. However, the accuracy test conducted at PGW facilities on January 21, 2025, showed that Meter #2356469 was just 1% slow and well within the $\pm 2\%$ margin of error allowed by the Commission's regulation at 52 Pa. Code § 59.22. PGW established that

Meter # 2356469 was installed brand new at the Service Address and section 59.21(g) of Commission regulations state in relevant part as follows,

(g) *Installation test.* Each gas meter shall be in good order and shall be correct at all test rates of flow to within 2.0% fast or slow before being installed. In the case of **new meters** or meters reconditioned by a manufacturer, the test results of the manufacturer can be accepted as the installation test if the utility has verified the manufacturer's reported test results by testing a minimum of 10% or ten meters--whichever is greater--of each shipment of meters. However, in case of an emergency, a meter not meeting the requirements of this section may be installed temporarily.

52 Pa. Code § 59.21(g) (emphasis added). PGW's policy for new meters complies with these provisions. PGW late-filed Exhibit 11. With Meter # 2356469 being a new meter, there is no record of it being tested by PGW prior to its installation. It was only tested after its removal from the Service Address.

In view of the above, I find that Mr. Frempong has failed to carry his burden of proving by a preponderance of the evidence that his gas bills from PGW were incorrect because his meter was inaccurate. In view of this, Mr. Frempong's Complaint against PGW is denied in its entirety.

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. 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, 100 (1980).

6. The Commission's regulations allow for a $\pm 2\%$ margin of error in gas meter accuracy. 52 Pa. Code § 59.22(a), (b).

7. In the case of new meters, the test results of the manufacturer can be accepted as the installation test if the utility has verified the manufacturer's reported test results by testing a minimum of 10% or ten meters--whichever is greater--of each shipment of meters. 52 Pa. Code § 59.21(g).

8. The Complainant failed to carry his burden of proof.

