**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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|  | Public Meeting held February 14, 2013 |
| Commissioners Present:  Robert F. Powelson, Chairman  John F. Coleman, Jr., Vice Chairman  Wayne E. Gardner  James H. Cawley  Pamela A. Witmer | |
| Darryl Hicks | C-2010-2207800 |
| v. |  |
| Philadelphia Gas Works |  |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Darryl Hicks (Complainant) on August 8, 2012,[[1]](#footnote-1) in response to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Cynthia Williams Fordham issued herein on July 12, 2012. Also before the Commission are the Reply Exceptions filed by Philadelphia Gas Works (PGW or the Company) on August 20, 2012. For the following reasons, we will deny the Complainant’s Exceptions, adopt the ALJ’s Initial Decision and dismiss the Complaint.

**History of the Proceeding**

On October 27, 2010, the Complainant filed a Complaint against the Company alleging, *inter alia*, the following: that there are incorrect charges on the bill; that he tried to avoid a service interruption in March 2010; that he was told that he was charged $6,066.01 after his meter was changed in May 2005 because his meter had not been recording actual usage since February 2000; and that the Company did not follow its own procedures when it changed the meter. The Complainant requested that the Company remove the outstanding charges on his bill for usage prior to the May 2005 meter exchange.

On November 22, 2010, the Company filed an Answer and New Matter. In its Answer, the Company, *inter alia*, denied that there are incorrect charges on the Complainant’s bill. The Company also referred to an October 6, 2010 Bureau of Consumer Services decision which dismissed the informal complaint and required the Complainant to pay a budget bill of $224.00, plus $158.00 toward the arrearage beginning in November 2010. The Company also stated that the Complainant’s account balance was $9,507.06.

In the New Matter the Company averred that after it exchanged the Complainant’s meter on May 2, 2005, it issued the Complainant a bill in the amount of $6,066.01 on May 3, 2005, for previously unbilled services. The Company also noted that the Complainant was in the Customer Responsibility Program (CRP) until September 29, 2009. When he was removed from CRP, the frozen arrears became due. The Company raised the issue that the Complainant is barred from contesting the May 2005 bill due to the three year statute of limitations, pursuant to Section 3314(a) of the Public Utility Code (Code), 66 Pa. C.S. § 3314(a). The Company also pointed out that, pursuant to Section 1312, the Complainant can only seek a refund up to four years after the improper bill is discovered.

After the Complainant requested and received a continuance, the hearing was held on February 6, 2012, before ALJ Fordham. The Complainant appeared *pro se* and the Company was represented by counsel. The Company presented one witness, Wendy Vacca, a customer review officer, who sponsored five exhibits.

The record was held open for the Company to submit a late filed exhibit regarding the CRP applications. Tr. at 95, 98-102. By correspondence dated March 15, 2012, the Company provided PGW Exhibit 6 - a seven page exhibit entitled “E-mail re: CRP enrollment records.” The Complainant did not object to the admission of Exhibit 6 by March 27, 2012. Therefore, PGW Exhibit 6 was admitted into evidence as a late filed exhibit.

The record in this case consists of a 104 page transcript of the hearing and six exhibits. The record closed on March 28, 2012.

In her Initial Decision, issued on July 12, 2012, ALJ Fordham concluded that the Complainant had failed to carry his burden of proof that the charges on his bills are incorrect. I.D. at 11. Accordingly, she recommended that the Complaint be dismissed. *Id.* Exceptions and Reply Exceptions were filed as above noted.

**Discussion**

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings.

*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

In her Initial Decision, ALJ Fordham reached twenty-nine Findings of Fact, I.D. at 3-6, and three Conclusions of Law, *id.* at 12. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

**Legal Standards**

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission’s decision 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. *Norfolk & Western Ry. Co. v. Pa. PUC,* 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a 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 customer shifts to the company. If the evidence presented by the company is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the company. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d)

While the burden of going forward with the evidence 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. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001).

Additionally, Section 1312(a) of the Code, 66 Pa. C.S. § 1312(a), is as follows:

**§ 1312. Refunds**

1. **General Rule.**-- If, in any proceeding involving rates, the Commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the Commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the Commission shall have the power and the authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment . . .

Section 3314(a) and (b) of the Code, 66 Pa. C.S. § 3314(a) and (b), are as follows:

**§ 3314. Limitation of actions and cumulation of remedies.**   
  
(a) **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.  
  
(b) **Remedies and penalties cumulative***.* --All suits, remedies, prosecutions, penalties, and forfeitures provided for, or accruing under, this part, shall be cumulative.

**Exceptions, Replies and Disposition**

The Complainant filed Exceptions on several issues.[[2]](#footnote-2) In its Replies, PGW points out that the Complainant does not address any error of fact or law made by the ALJ in reaching the conclusion that the Complainant failed to meet his burden of proof. R. Exc. at 3.

Based upon our review of the record and the applicable law, we are in agreement with the ALJ’s determination that the Complainant has failed to carry his burden of proof on the pertinent issues. Additionally, we find no basis within the Complainant’s Exceptions that would cause us to reject or modify the recommendations of the ALJ. We will specifically address the major issue raised by the Complainant’s Exceptions, *i.e*., events surrounding the meter removal and billing dispute in 2005.

**Meter Removal and Billing Dispute in 2005**

The ALJ noted that the Complainant alleged that he was contesting the May 2005 bill in the amount of $6,066.01 because he was not told that he could file a complaint with the Commission when he tried to contest the bill in 2005. I.D. at 7-8. The ALJ noted that it is undisputed that the Complainant was receiving estimated bills prior to May 2005, and that the Company exchanged the meter on May 3, 2005. Tr. at 51, 61; I.D. at 8. Wendy Vacca, a customer review officer for the Company, testified that a Company representative visited the property to obtain an actual reading and to exchange the meter. I.D. at 8. After the actual reading, the Company sent the Complainant a large bill because the previous bills were underestimated. Tr. at 51; I.D. at 8. Starting with June 2, 2005, the Complainant’s bills are based on actual meter readings. Tr. at 54; I.D. at 8.

The Company objected to the Complainant contesting the May 2005 bill because the Complaint was filed more than three years after the bill was issued and because any refund would be issued more than four years after the bill was issued. I.D. at 8. The Company argued that the Complainant is barred from contesting the May 2005 bill since the statute of limitations is three years, pursuant Section 3314(a), *supra*. Additionally, based on Section 1312, *supra*, the ratepayer can only seek a refund up to four years after the improper bill is discovered.

The ALJ noted that the Complainant acknowledged that the instant Complaint was filed more than four years after the May 2005 bill was issued. I.D. at 9. However, the Complainant protested that the Company failed to investigate at that time and, also, that he was not notified at that time that he could file a complaint with the Commission. *Id.*

According to to the ALJ, the evidence shows that the Complainant did protest the May 2005 bill to the Respondent on May 16, 2005. *Id.* In response to this protest, the Company sent a letter to the Complainant containing the results of its investigation. It also informed the Complainant about his right to file a complaint with the Commission. After analysis, the ALJ concluded that, even without the evidence regarding the investigation and notification, Section 3314(a) precludes the Complainant from filing a complaint in 2010 regarding a May 2005 meter exchange or a May 2005 bill. I.D. at 10. Additionally, Section 1312(a) prevents the Complainant from collecting a refund more than four years after the bill was issued. *Id.* Accordingly, the ALJ concluded that the Complainant had not carried his burden of proof that his bills were incorrect. *Id.*

In his Exceptions, the Complainant reiterates that he was contesting the May 2005 bill because he was not told that he could file a complaint with the Commission when he tried to contest the bill in 2005. The Complainant also avers that he did not receive a resolution from the Company when he disputed the bill in 2005. Exc. at 3-5.

In response, the Company avers that, in her disposition of this issue, the ALJ’s decision is supported by substantial evidence of record. The Company also argues that the ALJ correctly applies the pertinent sections of the Code governing the time frame within which one may file a complaint with the Commission. R. Exc. at 5.

On review of this Exception, we find that it lacks merit. Specifically, we note that it is undisputed that the Complainant was receiving estimated bills prior to May 2005 and that the Company changed the meter on May 3, 2005. Tr. at 51, 61, 66; PGW Exhs. 1-3; R. Exc. at 6. On May 3, 2005, before the meter exchange, the Complainant had a balance of $406.07. After the Company issued a make-up bill for $6,066.01, it credited $551.99 to the Complainant’s account for changes in the gas cost rate over the period of the makeup bill. I.D. at 8; Tr. at 53, 66; PGW Exh. 1, PGW Exh. 2 at 5. The evidence demonstrates that the Complainant disagreed with the bill after the meter exchange. Tr. at 51, PGW Exhs. 2, 3. After the dispute was filed on May 16, 2005, the Company sent the Complainant a letter explaining the findings and stating that he was eligible for a payment agreement for sixty-three months for payment of the rebilled amount. Tr. at 51, 61, 66, 67; PGW Exhs. 2 and 3.

Based on the above, we find that the ALJ properly concluded that the Complainant is barred from contesting the May 2005 bill. Sections 3314(a) and 1312(a) preclude the Complainant from filing a Complaint in 2010 regarding the May 2005 meter exchange or the May 2005 bill. Accordingly, the ALJ correctly concluded that the Complainant has not met his burden of proof, pursuant to Section 332(a), *supra*, on the matter of the Company’s alleged incorrect billing. Based on the foregoing, this Exception is denied.

**Conclusion**

Based upon the foregoing discussion, we shall deny the Complainant’s Exceptions, adopt the ALJ’s Initial Decision and dismiss the Complaint, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of Darryl Hicks to Administrative Law Judge Cynthia Williams Fordham’s Initial Decision, which was issued on July 12, 2012, are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Cynthia Williams Fordham is adopted, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Darryl Hicks, at Docket No. C‑2010-2207800, against Philadelphia Gas Works is dismissed.
4. That this proceeding be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 14, 2013

ORDER ENTERED: February 14, 2013

1. We note that the Exceptions were not timely filed. Since the Initial Decision was issued on July 12, 2012, the Exceptions were due to be filed no later than August 1, 2012. In its Reply Exceptions, the Company references a Secretarial Letter which granted the Complainant an extension of time in which to file Exceptions. R. Exc. at 1, 3. We have been unable to find that Secretarial Letter in the record. However, we will consider the Complainant’s Exceptions pursuant to Section 1.2(a), 52 Pa. Code   
   § 1.2(a), of our Regulations, which mandates that our Regulations be liberally construed in order to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. [↑](#footnote-ref-1)
2. In particular, we note that the Complainant’s Exceptions contend that he did not enroll in PGW’s Customer Responsibility Program (CRP). We agree with the ALJ that “although the Complainant denied applying for CRP is it clear that he was given discount billing and did not have late fees applied. He did not request rebilling at the regular rate” and “he benefited from being in CRP because he was receiving a discounted bill.” I.D. at 11. [↑](#footnote-ref-2)