**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Weaver :

 :

v. : F-2014-2457181

:

Philadelphia Gas Works :

**INITIAL DECISION**

Before

Eranda Vero

Administrative Law Judge

This Initial Decision dismisses David Weaver’s Complaint against Philadelphia Gas Works upon finding that Complainant has failed to carry his burden of proof under *Waldron* with respect to the disputed bill, and he failed to carry his burden of proving that he is entitled to the relief sought with regard to his enrollment in Philadelphia Gas Works’ Customer Responsibility Program.

history of the proceeding

On November 25, 2014, David Weaver (Mr. Weaver or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that there are incorrect charges on his first gas bill he received from PGW while residing at 2328 N. Garnett Street, Philadelphia, PA. As relief, the Complainant requested that his first bill be corrected and that he be enrolled in PGW’s Customer Responsibility Program (CRP).

This formal Complaint is a timely appeal of an informal complaint filed by the Complainant with the Bureau of Consumer Services (BCS) at BCS Case No. 3221415.

On December 30, 2014, Respondent filed an Answer denying the material allegations of the Complaint.

 A Hearing Notice dated February 26, 2015, notified the parties that an initial telephonic hearing was scheduled to take place before Administrative Law Judge David A. Salapa on Tuesday, April 14, 2015, at 10:00 a.m.

A Corrected Hearing Notice dated March 3, 2015, notified the parties that an initial telephonic hearing was scheduled in this matter for Wednesday, April 22, 2015, at 10:00 a.m.

A Prehearing Order was issued on March 3, 2015, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

Upon receipt of the Corrected Hearing Notice and the Prehearing Order, the Complainant requested an in-person hearing.

By Hearing Cancellation/Reschedule and Judge Change Notice dated March 19, 2015, the parties were notified that an initial in-person hearing was scheduled in this matter for Monday May 4, 2015, at 10:00 a.m. and that the matter was assigned to me.

On April 30, 2015, Mr. Weaver submitted a written request for a continuance of the scheduled hearing in order to obtain legal representation. The Respondent did not object to Mr. Weaver’s request and I cancelled the scheduled hearing.

A Hearing Notice dated June 18, 2015, notified the parties that the initial in-person hearing was scheduled for Monday, July 20, 2015, at 10:00 a.m.

The hearing convened as scheduled on July 20, 2015. David Weaver appeared pro se and testified on behalf of the Complaint. Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Jessica Glace, who is a Customer Review Unit Officer with PGW in charge of reviewing and investigating formal and informal complaints filed with the Commission. The Respondent sponsored four exhibits, all of which were admitted into the record in this case.

The record in this case consists of the transcript from the initial hearing on July 20, 2015, and PGW’s Exhibits 1-4. The record in this matter closed on August 19, 2015.

FINDINGS OF FACT

1. The Complainant is David Weaver, who resides at 2328 North Garnet Street, Philadelphia, PA 19132 (Service Address). Tr. 6.

2. The Respondent is Philadelphia Gas Works.

High Billing Dispute

3. Mr. Weaver applied for gas service at the Service Address by presenting to PGW a property lease beginning January 31, 2014. Tr. 26, PGW Exhibit 1.

4. PGW placed gas service for the Service Address in Mr. Weaver’s name as of the January 31, 2014 lease date. *Id.*

5. The Service Address is served by a meter equipped with an Automatic Meter Reading device (AMR). PGW Exhibit 1, at 2.

6. The Service Address has a gas heater and a gas water heater connected to the gas line. Tr. 29-30, PGW Exhibit 1.

7. The gas heater serving the Service Address was initially installed incorrectly by the landlord or the property management company. Tr. 8-9, 14-15.

8. By the second or third week of February 2014, the gas heater problem was corrected by the landlord or the property management company for the Service Address. *Id.*

9. On February 26, 2014, PGW billed the Complainant $92.57 for 57 CCF of gas used during 24 billing days. Tr. 33-34, PGW Exhibit 2, page 4 of 4.

10. On March 5, 2014, Mr. Weaver visited PGW’s North Philadelphia District Office to dispute his first bill from PGW. Tr. 26-27, PGW Exhibit 1.

11. By letter dated March 26, 2014, PGW’s dispute resolution unit responded to Mr. Weaver’s dispute by explaining that the bill was based on actual readings, and offering budget terms along with a copy of the statement of the account. Tr. 27, PGW Exhibit 1.

12. On April 11, 2014, Mr. Weaver filed an informal complaint with the BCS, at BCS Case No. 3221415 challenging his first bill as abnormally high. Tr. 28-29, PGW Exhibit 1.

13. On October 21, 2014, BCS dismissed Mr. Weaver’s informal complaint at BCS Case No. 3221415 after finding that the bill was based on actual meter readings and that the Complainant had not been at the Service Address long enough for the BCS to conduct a usage comparison. Tr. 29-30, PGW Exhibit 1.

14. On February 25, 2015, PGW billed the Complainant $136.12 for 96 CCF of gas used during 24 billing days. Tr. 35, PGW Exhibit 2, page 4 of 4.

Enrollment in PGW’s CRP Program

15. The Complainant was enrolled in the CRP program at least as early as September 7, 2006. Tr. 54, see also PGW Exhibit 1, at 13.

16. Mr. Weaver was removed from the CRP program on May 23, 2013 for non-payment. See PGW Exhibit 1, at 5.

16. In order to re-enroll into the CRP program, Mr. Weaver must pay a cure amount of $1,360.04. Tr. 54.

DISCUSSION

In the present formal Complaint, Mr. Weaver alleged that there are incorrect charges on his first gas bill he received from PGW while residing at 2328 N. Garnett Street, Philadelphia, PA. As relief, the Complainant requested that his first bill be corrected and that he be enrolled in PGW’s Customer Responsibility Program (CRP).

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 Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). 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) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, 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. A mere “trace of evidence or a suspicion of the existence of a fact” is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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 his 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. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (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.Cmwlth. 2001).

1. High Billing Dispute

In *Waldron v. Philadelphia Electric Company, (Waldron)*, 54 Pa. PUC 98 (1980), the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy annunciated 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 *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Order entered November 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. Weaver testified that his lease for the Service Address has a beginning date of January 31, 2014. He explained that the Service Address has a central air system, but once he moved into the Service Address he realized that there was no heat coming out of the vents. Tr. 8. According to Mr. Weaver, “the management company after a week and a half found out that they had installed the central air system incorrectly. … It took them another week almost to the last part of the week of the month before it got reinstalled.” Tr. 8-9, see also Tr. 14-15. Mr. Weaver argued that his first gas bill at the Service Address was for $92.57 and that it does not reflect the fact that no heat was used in his residence in the month of February in 2014. Tr. 9. He does not dispute any of the other gas bills he has received from PGW since then. Tr. 11-12.

During cross-examination, Mr. Weaver admitted that he has a gas heater and a gas water heater (Tr. 15) and that the heating problem was solved between “the second and the third week” of February 2014 (Tr. 14-15).

In response to Mr. Weaver’s testimony, PGW’s witness, Ms. Glace testified that Mr. Weaver established service at the Service Address by presenting to PGW a lease with a beginning date of January 31, 2014. Consequently, the Respondent placed gas service for the Service Address in Mr. Weaver’s name as of January 31, 2014 lease date. On February 26, 2014, PGW billed the Complainant $92.57 for 57 CCF of gas used during 24 billing days. Tr. 33-34, PGW Exhibit 2, page 4 of 4. On March 5, 2014, Mr. Weaver visited PGW’s North Philadelphia District Office to dispute his first bill from PGW. PGW’s dispute resolution unit responded to Mr. Weaver’s dispute by letter dated March 26, 2014. On that occasion, the Respondent explained to Mr. Weaver that the disputed bill was a winter heating bill and that the amount of the bill may also be due to the internal conditions with the gas appliances. PGW Exhibit 1, at 2. PGW added that Service Address was served by an AMR meter, and that the bill was based on actual readings and was correct as rendered. *Id.* Lastly, PGW offered to Mr. Weaver budget terms along with a copy of the statement of the account. *Id.*

On April 11, 2014, Mr. Weaver filed an informal complaint with the BCS, at BCS Case No. 3221415 challenging his first bill as abnormally high. On October 21, 2014, BCS dismissed Mr. Weaver’s informal complaint at BCS Case No. 3221415 after finding that the bill was based on actual meter readings and that the Complainant had not been at the Service Address long enough for the BCS to conduct a usage comparison. However, Ms. Glace testified that a usage comparison was possible as of the day of the hearing. She pointed out that, on February 25, 2015, PGW billed the Complainant $136.12 for 96 CCF of gas used during 24 billing days. Tr. 35, PGW Exhibit 2, page 4 of 4. According to PGW, this fluctuation is consistent with Mr. Weaver’s house heater not working for a few weeks in February of 2014. Tr. 35.

Ms. Glace also testified that PGW had no record or indication of the meter serving the Service Address ever malfunctioning. Tr. 38-39. PGW argued that the fact that no heat was coming out of Mr. Weaver’s vents, did not mean that the gas heater was not using any gas. Tr. 46-48. A heating system that is installed incorrectly could simply be misdirecting the heat that it produces. *Id.*

After carefully reviewing the record collected in this case I disagree with PGW’s argument that the difference in gas usage between February 2014 and February 2015 is consistent with Mr. Weaver’s house heater not working for a few weeks in February of 2014. That usage comparison ignores the steep difference in heating degree days[[1]](#footnote-1) (HDD) recorded by PGW during these two periods, as well as the number of days included in the respective billing cycles:

|  |  |  |  |
| --- | --- | --- | --- |
| **Billing Date** | **No. of Days** | **CCF Usage** | **HDD** |
| 2/26/2014 | 24 | 57 | 754 |
| 2/25/2015 | 31 | 96 | 1167 |

PGW Exhibit 2. The increase in gas usage experienced by Mr. Weaver in February 2015 is the likely result of the additional 413 heating degree days and seven billing days compared to February 2014. However, I agree with the rest of PGW’s arguments. First, the record in this case contains no indication that the meter serving the Service Address ever malfunctioned. Mr. Weaver in fact does not challenge any of the other bills he has received from PGW since February 2014. Yet, a meter does not malfunction and then right itself. Second, I agree that even an improperly installed heater could still use gas. In addition, the period when the gas heater was improperly installed was limited between two and three weeks. The properly installed gas heater became operational for at least a portion of the February 2014 billing cycle.

PGW submitted business records indicating that at the end of the billing cycle in February of 2014, the meter serving the Service Address reported an actual reading[[2]](#footnote-2) of 54 CCF of gas used in a period of 24 days. PGW Exhibit 2. This evidence is entitled to more weight than the Complainant's unsubstantiated claim that his heater was not using any gas while incorrectly installed. See Tr. 8, and *Richard Kirby v. PPL Electric Utilities Corporation*, Docket No. C-20066297 (Final Order entered November 16, 2006). In view of the above, I find that PGW has presented evidence of at least co-equal weight to that initially presented by Mr. Weaver, thus successfully rebutting his testimony. In turn, Mr. Weaver failed to present any additional and relevant evidence to successfully rebut that of the Respondent. For the reasons stated above, I find that the Complainant has failed to carry his burden of proof with regard to his claim that there are incorrect charges in his February 2014 bill from PGW.

1. Enrollment in PGW’s CRP Program

With regard to Mr. Weaver’s request to enroll in PGW’s CRP program, the Respondent entered evidence into the record showing that the Complainant was enrolled in the CRP program at least as early as September 7, 2006. Tr. 54, see also PGW Exhibit 1, at 13. He was last removed from the CRP program on May 23, 2013 for non-payment. See PGW Exhibit 1, at 5. Ms. Glace testified that in order to re-enroll into the program, Mr. Weaver must submit an application along with appropriate income documentation to PGW. Tr. 54. In addition, he needs to pay a CRP cure amount of $1,360.04. *Id.* At the hearing, Mr. Weaver indicated that he understood and accepted these requirements. Tr. 53-56. He offered no further testimony, statement or documentation in support of his requested relief.

In view of the above, the Complainant has failed to carry his burden of proving that he is entitled to the relief sought with regard to his enrollment in PGW’s CRP program.

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 Complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

3. 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. Philadelphia Electric Co.,* 54 Pa. PUC 98, 100 (1980).

4. Complainant has failed to carry his burden of proof under *Waldron* with respect to the disputed bill.

5. Complainant has failed to carry his burden of proving that he is entitled to the relief sought with regard to his enrollment in Philadelphia Gas Works’ Customer Responsibility Program.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of David Weaver against Philadelphia Gas Works at Docket No. F-2014-2457181 is dismissed in its entirety.

2. That the Secretary mark this docket closed.

Dated: March 29, 2016 /s/

 Eranda Vero

 Administrative Law Judge

1. Degree Day – A unit measuring the extent to which the outdoor mean (average of maximum and minimum) daily dry-bulb temperature falls below (in the case of heating) or rises above (in the case of cooling) an assumed base. The base is normally taken as 65°F for heating and for cooling unless otherwise designated. One degree-day is counted for each degree of deficiency below (for heating) or excess over (for cooling) the assumed base, for each calendar day on which such deficiency or excess occurs. James H. Cawley and Norman Kennard, *Rate Case Handbook, A Guide to Utility Ratemaking before the Pennsylvania Public Utility Commission*, Glossary of Terms, Appendix Q (Pa. PUC 1983). [↑](#footnote-ref-1)
2. Meter readings by an AMR are deemed actual readings pursuant to Commission regulation at 52 Pa.Code § 56.2. [↑](#footnote-ref-2)