

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Clovies Johnson	:	
	:	
v.	:	F-2015-2505042
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

HISTORY OF THE PROCEEDING

This Initial Decision sustains a formal complaint filed by a customer seeking relief from a utility bill assessed for usage during a time when the customer did not live at the residence in question.

On September 14, 2015, Clovies Johnson (Complainant or Mr. Johnson) filed a formal complaint against Philadelphia Gas Works (Respondent or PGW) in which he alleges that PGW is improperly holding him responsible for charges that accrued for service to a property at 6134 McMahan Street, Philadelphia, PA (McMahan Street address), during a time when he was not living at the address.

PGW filed an answer to the formal complaint on October 14, 2015. In its answer, PGW denied that there are incorrect charges on the Complainant's bill. PGW avers that an Experian credit check linked Mr. Johnson to the McMahan Street address during the time period at issue. It avers that the Complainant is responsible for a final bill in the amount of \$999.72.

By Telephonic Hearing Notice dated October 22, 2015, a hearing was scheduled for Monday, November 30, 2015, and the proceeding was assigned to me. I issued a Prehearing Order on October 26, 2015, in which I set forth certain requirements associated with participation in the hearing.

The hearing convened as scheduled. Complainant represented himself and submitted one six-page exhibit. PGW was represented by Graciela Christlieb, Esquire, who presented the testimony of Jessica Glace and submitted three exhibits. All of the exhibits were admitted into the record. A transcript of 36 pages was generated and the evidentiary record closed on December 30, 2015, upon the filing of the transcript with the Commission.

The matter is now ready for disposition.

FINDINGS OF FACT

1. Complainant is Clovies Johnson, 6134 McMahan Street, Philadelphia PA 19144. Tr. 6.
2. Respondent is Philadelphia Gas Works, a jurisdictional public utility providing residential gas service in the Commonwealth of Pennsylvania.
3. The charges that are at issue in this proceeding were incurred for service provided to 6134 McMahan Street, Philadelphia, PA. Tr. 6.
4. The Complainant testified on behalf of himself and sponsored one exhibit (Complainant's Exhibit No. 1), which was admitted into the record.
5. Complainant's Exhibit No. 1 is a six page exhibit that contains various documents addressed to the Complainant and showing an address of 6023 Market Street, Philadelphia, PA 19139 (Market Street address) from January 2014 through December 30, 2014. Complainant's Exhibit No. 1.

6. Complainant's Exhibit No. 1 consists of the following documents:
 - a. A Violation Notice of Failure to File Tax Return, dated 9/9/14;
 - b. A water/sewer/wastewater bill from the City of Philadelphia, dated 7/28/14;
 - c. A water/sewer/wastewater bill from the City of Philadelphia, dated 8/27/14;
 - d. A water/sewer/wastewater bill from the City of Philadelphia, dated 10/28/14;
 - e. A water/sewer/wastewater bill from the City of Philadelphia, dated 12/30/14;
 - f. A copy of a Medical Examiner's Certificate, dated 1/9/14; and
 - g. A copy of a driver's license, with an issue date of 1/16/13 and an expiration date of 11/12/14.

Complainant's Exhibit No. 1.

7. Jessica Glace, Customer Review Officer with PGW, testified on behalf of the Respondent and sponsored PGW Exhibit Nos. 1-3, all of which were admitted into the record.

8. PGW Exhibit No. 1 contains a summary of contacts between the Complainant and PGW. Tr. 23-24.

9. PGW Exhibit No. 2 is a statement of account showing billing, payment and balance information for the account at issue in this proceeding. Tr. 30.

10. PGW Exhibit No. 3 is a copy of the BCS decision on an informal complaint filed by the Complainant at BCS Case No. 3318832.

11. Complainant moved into the Market Street address in approximately 2006.
Tr. 18.

12. Complainant contacted PGW on December 1, 2014, to request that service be connected in his name at the McMahon Street address, and was informed that his name had been linked to the address since 2009 and that he would be responsible for payment of charges incurred at the address since April of 2014. Tr. 24; PGW Exhibit No. 1.

13. An Experian report showed the Complainant linked to the McMahon Street address because the cable TV service at the address was in his name. Tr. 16; PGW Exhibit No. 1.

14. The Complainant put the cable TV service at the McMahon Street address in his name as a favor to a friend, Tracy Bronson. Tr. 16-17.

15. Complainant moved into the McMahon Street address on January 1, 2015.
Tr. 13.

16. On January 8, 2015, Complainant visited a PGW office and presented a copy of a lease, dated December 1, 2014, for the McMahon Street address. Tr. 25-26, 27; PGW Exhibit No. 1.

17. Complainant currently lives at the McMahon Street address with Tracy Bronson, who is his landlord and fiancé. Tr. 15-16.

18. When a credit report indicates a person is linked with an address, it means there is some connection between the person and the address, but not necessarily that the person lived at the address. Tr. 26-27.

19. The Complainant lived at the Market Street address in 2014 during the time the charges at issue were incurred at the McMahon Street address. Tr. 10, 13; Complainant's Exhibit No. 1.

20. Service to the McMahon Street address under the Complainant's name was terminated on March 26, 2015. Tr. 33.

21. The total balance on the account for which PGW is holding the Complainant responsible totals \$999.72, and is for the time period from April 29, 2014 through March 26, 2015. Tr. 28-29, 33; PGW Exhibit No. 2.

DISCUSSION

Before moving into the McMahon Street address, the Complainant lived at the Market Street address since approximately 2006. On January 1, 2015, he moved into the McMahon Street address with Tracy Bronson, his landlord and fiancé. He subsequently provided a copy of a lease to PGW for the McMahon Street address that was dated December 1, 2014. An Experian report obtained by PGW linked the Complainant to the McMahon Street address in approximately 2009 due to his name being on the cable TV service at the property. Accordingly, PGW is holding him responsible for charges that accrued on the account since April 29, 2014. The Complainant claims he was not living at the McMahon Street address until January 1, 2015 and, accordingly, is not responsible for the disputed charges.

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). 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. *Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc denied*, 602 A.2d 863 (Pa. 1992). A preponderance of evidence is that which is more convincing, by even

the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854, 1950 Pa. LEXIS 316 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

As the proponent of a Commission order, Complainant has the burden of proof in this case. 66 Pa.C.S.A. § 332(a). The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa.Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a hearing. If the party with the initial burden of production (usually the Complainant) fails to produce sufficient evidence, the opposing party is entitled to receive a favorable ruling. If the party with the initial burden of production introduces sufficient evidence to make out a *prima facie* case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance or exceed the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to its position. The burden of production goes to the legal sufficiency of a party's case. The ultimate burden of proof always remains on the proponent of a rule of order.

Here, the Complainant is seeking a determination by the Commission that he is not responsible for the balance that accrued at the McMahon Street address between April 29, 2014 and January 1, 2015, when he alleges he was not living at the address. Accordingly, as noted above, he has the burden of proof.

The Complainant testified that he did not move into the McMahon Street address until January 1, 2015. Tr. 13. Prior to that date, he lived at the Market Street address since approximately 2006. Tr. 18. In support of his testimony, Mr. Johnson presented various documents that show him living at the Market Street address during 2014. Complainant's Exhibit No. 1 includes the following documents:

1. A "Violation Notice of Failure to File Tax Return," dated September 9, 2014;
2. A water/sewer bill from the Philadelphia Water Revenue Bureau dated July 28, 2014;
3. A water/sewer bill from the Philadelphia Water Revenue Bureau dated August 27, 2014;
4. A water/sewer bill from the Philadelphia Water Revenue Bureau dated October 28, 2014;
5. A water/sewer bill from the Philadelphia Water Revenue Bureau dated December 30, 2014;
6. A medical Examiner's Certificate dated January 9, 2014; and
7. A copy of a Pennsylvania commercial driver's license with an issuance date of January 16, 2013 and an expiration date of November 20, 2014.

Taken together, the documents contained in Complainant's Exhibit No. 1 cover the time period of January, 2014 through December, 2014 and show Mr. Johnson's address as 6023 Market Street, Philadelphia, PA 19138. Between his direct testimony and supporting documentation, the Complainant has made out a *prima facie* case that he was not living at the McMahon Street address in 2014.

With the Complainant having made out a *prima facie* case, the burden of production shifts to PGW to rebut the evidence presented by Complainant.

PGW presented the testimony of Jessica Glace, a Customer Review Officer who has been with the company for 9 years. Tr. 21. Ms. Glace sponsored PGW Exhibit Nos. 1-3. PGW Exhibit 1 is a record of contacts between Mr. Johnson and PGW. The exhibit shows that Mr. Johnson called PGW twice in December of 2014 to discuss initiating service in his name at the McMahon Street address. Tr. 24; PGW Exhibit No. 1. Ms. Glace testified that on both occasions, Mr. Johnson was informed that his name was linked, since 2009, to the McMahon Street address and that he would be held responsible for charges that accrued at that address from April 29, 2014 forward. Tr. 24; PGW Exhibit No. 1.

Ms. Glace testified that Mr. Johnson visited a PGW office on January 8, 2015 with a copy of a lease for the McMahon Street property that was dated December 1, 2014. Tr. 25-26; PGW Exhibit No. 1. Mr. Johnson was again informed by PGW during that visit that his name appeared on an Experian report as having been linked to the McMahon Street address since 2009 and, consequently, he would be responsible for all charges incurred since April 29, 2014. Tr. 25-26; PGW Exhibit No. 1.

On cross examination by PGW's attorney, the Complainant explained that he was linked to the McMahon Street service because he put cable TV service to the location in his name as a favor to a friend. Tr. 16-17.

PGW relies solely on the information in the Experian report showing a linkage between the Complainant and the McMahon Street address in support of its position that Mr. Johnson is responsible for charges incurred on the account during 2014. As explained below, this argument fails for two reasons.

PGW witness Glace testified that when a customer requests service, it performs an Experian credit check.¹ Tr. 26. When Mr. Johnson contacted PGW to establish service in his name at the McMahan street address, the Experian report showed him as being linked to the address since 2009. Tr. 26. Ms. Glace explained that being “linked” to an address means that there is some connection between a customer and a location, but not necessarily that the customer lives or lived at the address. Tr. 26-27. Other than its review of the Experian report, PGW offered no other evidence as proof that Mr. Johnson lived at the McMahan Street address during 2014.

The Experian report, had it been offered into evidence by PGW, would have correctly been denied as inadmissible hearsay. It is a report generated by a company other than PGW that PGW reviews for credit checking purposes. The report was not sponsored or authenticated by a representative of Experian. There is no explanation in the record about how the report is generated or the source of the information contained therein. Ms. Glace’s testimony about the Experian report may explain why PGW believed it was appropriate to hold the Complainant responsible for the disputed charges. To the extent PGW may have been offering the testimony as proof of Mr. Johnson’s connection to the McMahan Street address, however, that testimony, based entirely on an inadmissible document, is also hearsay. While it may provide a starting point for a utility to determine a proper billing party, it does not constitute admissible evidence to support a finding that anyone listed there should be held responsible for disputed charges.

Although Mr. Johnson did not object to the witness’s testimony about the contents of the Experian report, it was not corroborated by any other competent evidence. The Commission follows the *Walker* rule, which provides that hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency. Hearsay evidence admitted without objection will be given its natural probative effect and may support a finding of the agency if it is corroborated by any competent evidence in the record. A finding of fact based solely on hearsay will not stand. *Walker v. Unemployment Compensation Board of Review*, 367

¹ 52 Pa.Code § 56.35(b)(2) permits a utility to establish that an applicant previously resided at a property for which residential service is requested through the use of a mortgage, deed or lease, a commercially available consumer credit reporting service or other methods approved as valid by the Commission.

A.2d 366, 370 (Pa. Cmwlth. 1976). Since the only evidence presented by PGW in support of its position that Mr. Johnson is responsible for the disputed charges was Ms. Glace's testimony about a notation in the Experian report, it is not competent to support a finding of fact.

Secondly, even if I were to accept and consider the testimony about the Experian report, PGW would not have met its burden of persuasion to shift the burden back to the Complainant to present additional evidence. As noted above, the entirety of PGW's evidence would be its testimony about the "link" suggested in the Experian report. The link is not that the Complainant resided at the McMahan Street address during the time period in question but, merely, that his name was on the cable TV bill for the location. The Complainant, on the other hand, presented not only his direct testimony that he did not live at the McMahan Street address until January 1, 2015, but also a number of documents, all of which were admitted into the record, showing his address as the Market Street location during 2014. The Complainant has presented evidence on the issue of his residence during 2014 that is significantly more convincing than that offered by PGW. Accordingly, the Complainant has met his burden of proof.

PGW is holding the Complainant responsible for charges that accrued on the account from April 29, 2014 through March 26, 2015, when the account was closed. This amount totals \$999.72. Tr. 32. The Complainant acknowledged having moved into the McMahan Street address on January 1, 2015. Tr. 13. Accordingly, I find that Mr. Johnson is responsible for charges that accrued on the account from January 1, 2015 through the time the account was closed on March 26, 2015. I find that he is not responsible, however, for the charges that accrued on the account from April 29, 2014 through December 31, 2014. Therefore, PGW is directed to calculate the portion of the total balance of \$999.72 that was incurred through December 31, 2014 and remove that amount from Mr. Johnson's final bill. PGW is further directed to re-calculate the Complainant's final bill to include only those charges that accrued on the account from January 1, 2015 until the account was closed, and to send him a revised final bill containing only those charges.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 703.

2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a).

3. 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. *Patterson v. Bell Tel. Co. of PA*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

4. This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), *alloc, denied*, 602 A.2d 863 (1992). A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854, 1950 Pa. LEXIS 316 (1950).

5. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review*, 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

6. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

7. As the proponent of a Commission order, Complainant has the burden of proof in this case. 66 Pa.C.S.A. § 332(a).

8. The “burden of proof” is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 2000 Pa.Super. 178, 754 A.2d 1283 (2000).

9. Hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency. Hearsay evidence admitted without objection will be given its natural probative effect and may support a finding of the agency if it is corroborated by any competent evidence in the record. A finding of fact based solely on hearsay will not stand. *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366, 370 (Pa.Cmwlth. 1976).

10. The Complainant presented sufficient competent evidence to support a finding that he is not responsible for charges incurred at the McMahon Street address from April 29, 2014 through December 31, 2014.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Clovies Johnson against Philadelphia Gas Works at Docket No. F-2015-2505042 is sustained.

2. That, within 30 days of the date of a final order in this matter, Philadelphia Gas Works shall calculate the portion of the total balance of \$999.72 that was incurred through

