

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Satta Anderson

v.

Philadelphia Gas Works

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:
:

F-2016-2572373

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The Complainant filed a formal complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company). The Complainant failed to sustain her burden of proof for a payment arrangement. This decision dismisses the Complaint for failure to sustain the burden of proof.

HISTORY OF THE PROCEEDING

On October 20, 2016, Satta Anderson (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against the Respondent. The Complainant indicated that the utility was threatening to terminate her service or had already terminated her service and that she requested a payment arrangement.

The Complaint was served electronically (eService) by the Commission's Secretary on October 21, 2016, according to the audit history of the docket. The eService is

pursuant to the Waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

The Respondent filed an Answer on November 10, 2016. The Respondent admitted that it terminated gas service at 6634 Dicks Avenue, Philadelphia, Pennsylvania (service address) on June 3, 2014, for non-payment.

On September 12, 2016, Respondent averred that a PGW technician visited the service address on an unbilled usage investigation and found the gas on as well as a tampered meter bypass. The PGW technician shut off the gas and removed the meter. The Respondent determined on September 13, 2016, that the Complainant was responsible for the tampered meter bypass. The Respondent held the Complainant responsible for gas service from June 3, 2014 through August 30, 2016, which amounted to a tampered meter bypass charge of \$4,326.40.

The Respondent stated in its Answer that the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 3477145. On September 21, 2016, the BCS by decision concluded that the Complainant was responsible for bypass charges at the service address. The instant Complaint is a timely appeal of the BCS informal complaint at Case No. 3477145.¹

By Hearing Notice dated January 20, 2017, this matter was scheduled for an initial hearing on Thursday, March 9, 2017, at 10:00 a.m. The matter was assigned to Administrative Law Judge (ALJ), Cynthia W. Fordham.

A Prehearing Order dated February 10, 2017, advised the parties of the date and time of the scheduled hearing, and informed them of the procedures applicable to this proceeding.

¹ Complainant also filed an informal complaint at BCS Case No. 3484599. BCS concluded that Case No. 3483599 was a duplicate of Case No. 3477145 and closed the informal complaint.

On February 24, 2017, a Judge Change Notice was issued which changed the ALJ to the undersigned. The scheduled date of the initial hearing remained unchanged.

The initial hearing convened as scheduled. The Complainant was present and represented herself. Counsel for the Respondent, Graciela Christlieb, Esquire, was present and was accompanied by one witness, Tiffany Jones. The Complainant testified and offered four exhibits which were all earnings statements to show her income. These exhibits were identified as Complainant Exhibits 1, 2, 3 and 4. All of the Complainant's exhibits were admitted into the record without objection. The Respondent presented one witness, Tiffany Jones, a customer review officer at PGW. The Respondent sponsored testimony regarding the following six exhibits:

- (1) Account statement from 3/2013 to 11/2015 – PGW Exhibit 1;
- (2) Account statement from 9/2016 – PGW Exhibit 2;
- (3) Service order – PGW Exhibit 3;
- (4) Field service activity – PGW Exhibit 4;
- (5) BCS decisions – PGW Exhibit 5; and
- (6) Philadelphia property record – PGW Exhibit 6.

All six exhibits were admitted into the record without objections.

During the course of the proceeding, the undersigned requested that the Respondent provide the calculation of the amount allegedly owed by the Respondent. In compliance with my Order, the Respondent offered the calculation as a late-filed exhibit on March 15, 2017, PGW Exhibit 7. Complainant was directed to object to the exhibit if she had an objection by close of business on March 24, 2017. To date, there is no objection filed by the Complainant.

The transcript was received on April 4, 2017, and consisted of 52 pages of transcribed testimony. The record closed when the transcript was received on April 4, 2017. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Satta Anderson who resides at 6634 Dicks Avenue, Philadelphia, Pennsylvania (service address). Tr. 6-7.

2. The Respondent is Philadelphia Gas Works.

3. The Complainant lived at the service address for five years. Tr. 8.

4. The Complainant's household is four children ages 14, 7, 5 and 1 and herself as the only adult.

5. The Complainant acknowledged that when the Respondent terminated her gas service, a friend of hers turned the gas service back on. Tr. 9-10.

6. The Complainant has the following gas appliances at the service address:
 - a. range or stove;
 - b. heater; and
 - c. water heater. Tr. 10, 23, PGW Exhibit 4.

7. Complainant works in hospitality at a hotel with the following bi-weekly income:
 - a. October 8, 2016 to October 21, 2016 -- \$665.07;
 - b. December 17, 2016 to December 30, 2016 -- \$776.06;
 - c. December 31, 2016 to January 13, 2017 -- \$683.23; and
 - d. January 14, 2017 to January 27, 2017 -- \$665.33. Tr. 12-13, Complainant Exhibits 1-4

8. Tiffany Jones is employed by the Respondent as a customer review officer who handles the informal and formal complaints filed by the customer at the Commission. Tr. 120.

9. Ms. Jones has been a senior customer review officer for 1 ¼ years and has been employed by the Respondent for 10 years. Tr. 15.

10. Ms. Jones investigated the Complaint as a customer review officer of the Respondent. Tr. 16.

11. The Complainant's gas service was terminated at the curb valve on June 3, 2014, for non-payment and she currently does not have gas service. Tr. 9, 20, PGW Exhibit 3.

12. The Complainant's gas service account was put in write off status on October 24, 2014, with an outstanding balance of \$768.42. Tr. 17-19, PGW Exhibit 1.

13. The Complainant made a payment for gas service on November 23, 2015, in the amount of \$504.35. Tr. 19, PGW Exhibit 1.

14. The Complainant owes \$264.07 ($\$768.42 - \$504.35 = \264.07) for gas service that was terminated on June 3, 2014. Tr. 19, PGW Exhibit 1.

15. The Respondent is willing to provide a payment arrangement on the amount owed, \$264.07, when service was terminated on June 3, 2014. Tr. 25.

16. On August 30, 2016, PGW performed a safety valve check at the service address, was unable to gain access to the property, found the gas service on and turned the gas service off. Tr. 21-22, PGW Exhibit 4.

17. A valve check is a visit to a property to confirm that the curb valve is still off after it had been previously shut off. Tr. 21.

18. On September 12, 2016, the Respondent found a bypass at the service address. Tr. 22, PGW Exhibit 4.

19. On September 12, 2016, the Respondent terminated gas service for unbilled unauthorized usage. Tr. 22-23.

20. In an unbilled usage investigation PGW gained access inside the property. Tr. 23.

21. On September 12, 2016, the Respondent found the three gas appliances at the service address operational. Tr. 23, PGW Exhibit 4.

22. The Respondent calculated the amount owed by the Complainant for theft of gas service from June 3, 2014 to August 30, 2016, as \$4,326.40. Tr. 20, PGW Exhibits 2, 7.

23. The Respondent declined to provide a payment arrangement because the Company does not provide payment arrangements when there is theft of service. Tr. 24.

24. On September 15, 2016, the Complainant filed an informal complaint with BCS at Case No. 3477145. Tr. 24, PGW Exhibit 5.

25. On September 23, 2016, BCS found the Complainant responsible for unauthorized usage of gas service from June 3, 2014 to August 30, 2016, at the service address in the amount of \$4,326.40 and dismissed the informal complaint. Tr. 25-28, PGW Exhibit 5.

26. The Complainant filed another informal complaint with BCS at Case No. 3484599 on October 13, 2016, which requested a payment arrangement. Tr. 28, PGW Exhibit 5.

27. The informal complaint at BCS Case No. 3484599 was dismissed as a duplicate of BCS Case No. 3477145. PGW Exhibit 5.

DISCUSSION

I. Applicable Legal Standard

As the proponent of a rule or order or seeking affirmative relief from the Commission, 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); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the 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); *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).

If the Complainant presents 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).

II. Whether Complainant Should Receive a Payment Arrangement

A. Whether there was unauthorized usage of gas

Complainant requested a payment arrangement on the amount owed to the Respondent to restore gas service to the service address. Respondent stated that it would grant a payment arrangement for the amount owed for service up to June 3, 2014, which is \$264.07. Tr. 25. However, Respondent stated it would not grant a payment arrangement on the amount owed from June 3, 2014 to August 30, 2016, because the gas was used through unauthorized means. Tr. 24-25. The amount attributed to the unauthorized usage of gas service at the service address is \$4,326.40. Tr. 25, PGW Exhibit 2, 7. Section 56.2 of Title 52 of the Pennsylvania Code defines unauthorized use of utility service as,

Unauthorized use of utility service—Unreasonable interference or diversion of service, including meter tampering (any act which affects the proper registration of service through a meter), by-passing unmetered service that flows through a device connected between a service line and customer-owned facilities and unauthorized service restoration.

52 Pa.Code § 56.2.

The Respondent testified that on August 30, 2016, the valve curb was discovered turned on although the Company previously left it off at the service address on June 3, 2014. Tr. 21-22, PGW Exhibit 4. This occurrence of the valve found on when the Respondent had previously turned the valve off can be considered unauthorized service restoration, and therefore, fits the definition of unauthorized use of utility service.

The Complainant does not dispute that gas service was used through unauthorized means. Rather, the Complainant testified,

...I start working and I working in like hotel. Sometime we slow, sometime busy, and I normally have enough money to pay to turn the gas on. Then they [PGW] turn it off. I come from work. I was so confused.

Somebody, friend of mine, turned it on.

Q. A friend of yours turned the gas on?

A. Yeah.

Q. After the Company turns it off your friend turned [the gas] on?

A. A friend of mine came to my house meets me outside and she told me she know (sic) somebody and the person came and turned it off—turned it on for me.

Tr. 9-10. Consequently, through her testimony, the Complainant admits to unauthorized usage of gas. The issue is whether there is pertinent Commission regulation, law or policy to prohibit the Complainant from receiving a payment arrangement for the amount attributed to unauthorized usage of gas service to justify the Respondent's refusal to provide the Complainant a payment arrangement.

- B. Whether it is appropriate not to amortize amount owed when there is unauthorized usage of gas service

Pursuant to *Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015) at 8, “a payment arrangement is [not] appropriate when the person requesting the arrangement was involved in a theft of utility service while residing at the service location.” The Respondent under applicable law is not required to issue an amortized payment arrangement on amounts owed resulting from fraud or theft. *Id* at 9. In this case, the Complainant knew gas service was turned on by an unauthorized person at the curb valve when the Respondent had turned it off. This is an act by the Complainant to help herself to Respondent's gas service or theft. Pursuant to *Fassett*, the Respondent here is not obligated to amortize the outstanding balance due. Consequently, the Respondent is following appropriate law to deny any payment arrangement to the Complainant on the amount owed for unauthorized usage of gas service from June 3, 2014 to August 30, 2016.

Moreover, I find that the amount calculated for the unauthorized usage of service from June 3, 2014 to August 30, 2016 is reasonable. Respondent used June 3, 2014, the date that the Respondent terminated service at the curb valve, as the start date for the unauthorized use and August 30, 2016, the date when the curb valve was discovered on without authorization, as the end date. Respondent used methodology consistent with its practice of calculating a back bill for theft of service based on the capacity of the historical usage at the service address coupled with the number of degree days during the relevant period. PGW Exhibit 7. I find the result of billing the Complainant the lump sum amount of \$4,326.40 unamortized for the period of June 3, 2014 to August 30, 2016, reasonable.

It is noted that Complainant did not dispute this amount owed.

Although the Respondent is willing to amortize the balance due before June 3, 2014 in the amount of \$264.07, I do not find that action reasonable. The Complainant owes a substantial amount for self-help to the Respondent's gas service. To require the Respondent to amortize the \$264.07 when a significant amount is outstanding is not logical or reasonable.

C. Conclusion

I find that the Complainant failed to sustain her burden of proof regarding her request for a payment arrangement on the total amount owed.

I find the Respondent acted reasonably in responding to the Complainant's request for a payment arrangement.

CONCLUSIONS OF LAW

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

2. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the

smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. The Complainant's action of obtaining gas service by self-help is unauthorized use of utility service. 52 Pa.Code § 56.2.

4. A payment arrangement is inappropriate when the requestor was involved in theft of service while residing at the service location. *Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015).

5. The Complainant had the burden of proof and failed to sustain her burden regarding a request for a payment arrangement of the total amount owed for gas service. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Satta Anderson against Philadelphia Gas Works at Docket No. F-2016-2572376 is dismissed.

2. That the Secretary's Bureau shall mark the matter at Docket No. F-2016-2572376 closed.

Date: May 5, 2017

/s/
Angela T. Jones
Administrative Law Judge