

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg PA 17120

Kenneth McLean
v.
Philadelphia Gas Works

Public Meeting held October 5, 2017
2539492-OSA
C-2016-2539492

MOTION OF COMMISSIONER DAVID W. SWEET

This case comes to us on the Exceptions filed by Philadelphia Gas Works (PGW) and Reply Exceptions filed by Kenneth McLean, Complainant, to an Initial Decision of Administrative Law Judge Mary D. Long (ALJ) finding that PGW had failed to demonstrate that Kenneth McLean was responsible for the outstanding balance of the service address prior to placing that service in his name. The house was owned by his parents, and when they died, the house went to Mr. McLean. When he had the gas service account switched to his name, PGW records show that Mr. McLean admitted that he had been living in the house, and a credit report confirmed that he had been associated with that property and no other since 1986.

The ID relies on a Commission regulation to support its determination:

A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. . . .

52 Pa.Code §56.35 (b)(2) (in pertinent part).

The Initial Decision states that the burden of proof in this case was on the utility because of this regulation, and states that PGW relied solely on a customer contact report which indicates the result of a credit report stating that the Complainant's last known address was the service address in 1986.

While a utility must ensure that its action of requiring payment of an outstanding residential account is justified under this regulation, once it has assigned the arrearage to a customer or potential customer, and that customer wishes to contest the assignment in a formal complaint before this Commission, that Complainant has the burden of proving that the utility has acted in violation of a statute, regulation, or order that the Commission has responsibility for administering.¹ Therefore, the Complainant had the burden of proving that the utility's action in assigning the arrearage that his mother had not paid was incorrect.

Only if the Complainant carries that burden initially does the burden of persuasion (i.e., the burden of going forward with the evidence) shift to the utility to defend its actions. Here, the ID states that the Complainant had testified credibly that he did not live at the property between

¹ 66 Pa.C.S. §332(a).

1986 and the time of his inheritance, that he was largely homeless and reliant upon friends. However, the testimony was not accompanied by a single document to support that he lived elsewhere at any point from 1986, when he admits he lived there, and December 2014, when he testified that he moved back in. Moreover, the Complainant was unable to provide addresses where he lived and full names of any individuals with whom he lived during the time-period in question.

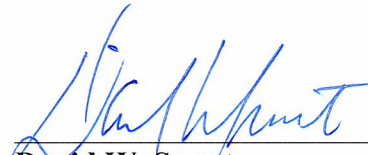
Even if his testimony were sufficient to carry the burden of proof initially PGW answered it with its customer contact report which states that Mr. McLean told PGW that he was living at the house, and an Experian credit report that could find no association with any other address during the time period in question.² In other words, PGW had credibly carried its burden of persuasion, which shifted the burden back to Mr. McLean. As no further evidence was admitted, he failed to carry it, and in doing so, failed to carry the burden of proof.

THEREFORE,

I MOVE:

1. That the Initial Decision of Administrative Law Judge Mary D. Long is reversed.
2. That the Exceptions of Philadelphia Gas Works are granted.
3. That the Reply Exceptions of Kenneth McLean are denied.
4. That the Office of Special Assistants prepare an appropriate order consistent with this motion.

October 26, 2017
Date



David W. Sweet
Commissioner

² The credit report was mischaracterized in the Initial Decision as stating that there was no address other than the service address in 1986. In fact, it stated that there was no other address associated with the Complainant since 1986.