

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darlene Davis	:	
	:	
v.	:	F-2016-2573100
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the portion of the formal Complaint filed by Darlene Davis against Philadelphia Gas Works at Docket No. F-2016-2573100 concerning charges accrued due to theft of service at the service address during the period October 1, 2008 through August 22, 2013. This Initial Decision also denies the portion of the formal Complaint concerning unauthorized usage of gas charges accrued at the service address during the periods April 21, 2008 through September 30, 2008, and August 23, 2013 through September 6, 2016.

**HISTORY OF THE PROCEEDING**

On October 25, 2016, Darlene Davis (Complainant or Ms. Davis) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that PGW had requested that she pay \$24,000 in connection with theft of service charges assessed during a period of time when she was not in possession of the service address. As relief, Ms. Davis wants to establish service at the service address under her name without being held responsible for the theft of service charges.

The Complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision, dated September 26, 2016, at BCS Case # 3476480, that dismissed the Complainant's informal complaint.

On November 16, 2016, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

By Hearing Notice dated December 12, 2016, a hearing was scheduled for Thursday, January 26, 2017, at 10:00 a.m., and the matter was assigned to me.

A Prehearing Order was issued on January 6, 2017, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on January 26, 2017. The Complainant appeared *pro se* and testified in support of the Complaint. The Complainant's mother, Helen Carter, also testified in support of the Complaint. The Complainant sponsored two exhibits which were admitted into the record. Graciela Christlieb, Esq. represented the Respondent, and presented the testimonies of Tiffany Jones, Nicholas Anastasi, and Michael A. Wallace. The Respondent sponsored 12 exhibits which were admitted into the record.

Prior to the conclusion of the hearing, I Instructed the Complainant and the Respondent to submit additional documentation as late-filed exhibits within 30 days or by February 27, 2017. The parties were also informed that any objections to the opposing party's late-filed exhibits must be submitted in writing on or before March 10, 2017. Tr. 57-58.

On February 27, 2017, Ms. Davis submitted Complainant late-filed Exhibits 3 and 4. Also on February 27, 2017, PGW submitted PGW late-filed Exhibits 13 and 14.

Neither party filed objections to the opposing party's late-filed exhibits.

No objections having been filed Complainant late-filed Exhibits 3 and 4 and PGW late-filed Exhibits 13 and 14 are admitted into the record in this matter.

The record in this matter closed on March 10, 2017.

#### FINDINGS OF FACT

1. Complainant is Darlene Davis, who is the owner of the property at 5827 Ashland Avenue, Philadelphia, PA 19143 (Service Address). Tr. 8.

2. From 2006 to 2008, Ms. Davis resided at 5647 Adison Street, Philadelphia, PA 19143, which she rented from Kirby Ames. Tr. 19-20, 56.

3. On March 21, 2008, Mr. Ames executed a Line of Credit Agreement, secured by the Service Address, in the amount of \$67,500 with Citizens Bank. Tr. 21, Complainant Exhibit 1.

4. On April 21, 2008, Kirby Ames sold the Service Address to Ms. Davis. Tr. 9, 21, Complainant Exhibit 1 and Complainant late-filed Exhibit 3.

5. The deed for the Service Address was dated April 21, 2008 but was not recorded with the Records Department of the City of Philadelphia until October 16, 2008. Complainant Exhibit 1

6. Ms. Davis purchased the Service Address using a mortgage loan for \$85,000 from Wells Fargo. Complainant late-filed Exhibit 3.

7. Ms. Davis made the first payment towards the Wells Fargo mortgage loan on June 2008. Complainant late-filed Exhibit 3.

8. Gas service at the Service Address was shut off at the curb valve on September 24, 2002. Tr. 63, PGW Exhibit 1.

9. On May 28, 2008, Ms. Davis contacted PGW seeking to have gas service turned on at the Service Address. Tr. 64, PGW Exhibit 2.

10. PGW ran a credit check on Ms. Davis and informed her that she needed to pay a security deposit of \$380 before service could be initiated in her name. Tr. 64, PGW Exhibit 2.

11. Also on May 28, 2008, Ms. Davis provided to PGW the gross income and number of people in the household and was instructed to apply for enrollment in PGW's customer responsibility program. *Id.*

12. In August 2008, Ms. Davis started receiving foreclosure notices on the service address from Citizens Bank. Tr. 9.

13. The foreclosure notices were both in the names of Kirby Ames and Ms. Davis'. Tr. 9.

14. In or around September of 2008, Ms. Davis moved in with her mother, Helen Carter, with whom she stayed sporadically until June of 2016. Tr. 10, 45, 47, 50-51.

15. Ms. Davis did not put her mother's address at 1835 South 23<sup>rd</sup> Street, Philadelphia, PA on any of her documents or paperwork because she did not wish to affect Ms. Carter's income which consisted of Social Security disability benefits. Tr. 44-45, 48.

16. Ms. Davis also stayed sporadically with a friend in Penns Grove New Jersey and rented a room from her hairdresser during the period September 2008 through June 2016. Tr. 50-52.

17. Due to the litigation with Citizens Bank Ms. Davis was not allowed to enter the Service Address after September 2009, but her alarm system at the Service Address kept going off triggering safety inspections by the police. Tr. 10-11, 14-15.

18. Ms. Davis visited the Service Address with a police officer but found no one there. Tr. 11, 14-15.

19. On May 18, 2010, Citizens Bank reinstated a prior complaint in the Court of Common Pleas of Philadelphia County (Case ID: 100502395) seeking Judgment in Mortgage Foreclosure against Darlene Davis as owner of the Service Address and Kirby Ames as mortgagor in connection with the Line of Credit loan that Mr. Ames had obtained in March of 2008. Complainant Exhibit 1.

20. On December 17, 2012, Judge Annette M. Rizzo of the Court of Common Pleas of Philadelphia County issued an Order memorializing Citizens Bank's agreement to discontinue the case against Ms. Davis and Mr. Ames and reassigning the case or the debt to Wells Fargo.

21. On or about January 3, 2013, Ms. Davis obtained a new Driver's License with the Ashland Avenue address on it. Tr. 42.

22. On August 22, 2013, Citizens Bank's complaint against Ms. Davis and Mr. Ames (Case ID: 100502395) was closed. Tr. 12.

23. After her legal case with Citizens Bank was closed, Ms. Davis tried to enter the Service Address in 2013, but found that she was locked out of it by squatters. Tr. 12.

24. In 2014, Ms. Davis was unable to attend to the squatter problem due to other personal issues. Tr. 14.

25. In August of 2015, Ms. Davis had some of her acquaintances forcefully remove the squatters from the premises. Tr. 15, 134, Complainant late-filed Exhibit 3.

26. The removal ended in physical altercations between Ms. Davis and the people squatting at her property, which necessitated police intervention. Tr. 15, 36, Complainant late-filed Exhibit 3.

27. Once inside the Service Address, Ms. Davis noticed that the house was not in livable conditions because some of the pipes were missing. Tr. 15.

28. In recent years, PGW has set in place a program which employs its Field Service Division (FSD) crews to do routine safety checks on curb valves that should be turned off. Tr. 86-87, see also PGW late-filed Exhibit 14.

29. On September 6, 2016, PGW technician Nicholas Nastasi visited the Service Address on a Curb Valve Safety Recheck order where he found gas on at the curb. Tr. 66-67, PGW Exhibit 2.

30. Mr. Nastasi turned gas off at the curb with an expander and left a post termination notice on the door of the Service Address since he was unable to gain access to the property. Tr. 66-67, PGW Exhibit 2.

31. On September 7, 2016, Ms. Davis contacted PGW as instructed by the post termination notice. PGW Exhibit 2.

32. Also on September 7, 2016, PGW technician Michael Wallace visited the Service Address and removed Meter # 1418856 from the property. Tr. 66-67, PGW Exhibit 2.

33. At the time of its removal, Meter # 1418856 was missing its Encoder Receiver Transmitter (ERT) head and had stopped at index 0. Tr. 66-67, PGW Exhibits 2 and 4.

34. Mr. Wallace listed the following gas appliances found at the Service Address on September 7, 2016: a 7,500 BTU house heater, a 30,000 BTU automatic water heater, and a 54,000 BTU automatic gas range. Tr. 67-68, PGW Exhibits 2 and 4.

35. With the ERT head removed, the gas meter is unable to record or transmit any usage at all. Tr. 96.

36. The removal of the ERT head essentially turns the gas meter into a pipe bypass. Tr. 96.

37. Following Mr. Wallace's visit, Ms. Davis contacted PGW again on September 7, 2016, seeking the terms for reconnection of service at the Service Address. PGW Exhibit 2.

38. On September 8, 2016, Ms. Davis visited PGW's South Philadelphia Office again seeking the terms for reconnection of service at the Service Address and providing documentation of her legal case with Citizens Bank. PGW Exhibit 2.

39. On September 13, 2016, Ms. Davis contacted PGW again via telephone seeking the terms for reconnection of service at the Service Address. Tr. 68, PGW Exhibit 2.

40. On September 13, 2016, PGW informed Ms. Davis that she needed to pay \$23,056.21 to have the gas service turned on at the Service Address. *Id.*

41. The \$23,056.21 represents the charges for the unauthorized usage of gas that occurred at the Service Address during the period April 21, 2008 through September 6, 2016. Tr. 74-75, PGW Exhibit 5.

42. Because the gas meter removed from the Service Address on September 7, 2016, was missing its ERT head, PGW based its calculation of unauthorized usage on historical

usage at the property during the period July 25, 2001 through July 23, 2002. Tr. 75-77, 81-82, PGW Exhibits, 5 and 6.

### DISCUSSION

In her formal Complaint, Ms. Davis averred that PGW had requested that she pay \$24,000 in connection with theft of service charges assessed during a period of time when she was not in possession of the Service Address. As relief, Ms. Davis wants to establish service at the Service Address under her name without being held responsible for the theft of service charges.

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). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). 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.Cmwlt. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 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*, 413 A.2d 1037 (Pa. 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 her 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*, 461 A.2d 1234 (Pa. 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).

At the hearing, Ms. Davis testified that she is the owner of the Service Address located at 5827 Ashland Avenue, Philadelphia, PA 19143. From 2006 to 2008, she resided at 5647 Adison Street, Philadelphia, PA 19143, which she rented from Kirby Ames. On March 21, 2008, Mr. Ames executed a Line of Credit Agreement, secured by the Service Address, in the amount of \$67,500 with Citizens Bank. On April 21, 2008, Kirby Ames sold the Service Address to Ms. Davis. Although the deed for the Service Address was dated April 21, 2008, it was not recorded with the Records Department of the City of Philadelphia until October 16, 2008. Ms. Davis testified that she purchased the Service Address using a mortgage loan for \$85,000 from Wells Fargo. She made the first payment towards the Wells Fargo mortgage loan on June 2008.

Ms. Davis testified that in August 2008, she started receiving foreclosure notices on the Service Address from Citizens Bank. The foreclosure notices were both in the names of Kirby Ames and hers. According to the Complainant, she resided at the Service Address for about a month before she was evicted or told to vacate the property. She moved in with her mother, with whom she stayed sporadically during the period September 2008 to June 2016. She also stayed sporadically with a friend in Penns Grove, New Jersey, and rented a room from her hairdresser.

Ms. Davis testified that during this time her alarm system at the Service Address kept going off, triggering an inspection by the police every single time. She explained that she visited the property with a police officer but found no one there. Due to the litigation with Citizens Bank, Ms. Davis was not allowed to enter the property to turn off the alarm. According to Ms. Davis, the alarm system went off so often that she had to go to court for the unreasonable number of times her security system triggered police calls to the Service Address. By this time, she believed that there were people living at the Service Address, squatters, but because her title to the property was not clear, she was unable to take measures to evict them.

On May 18, 2010, Citizens Bank reinstated a prior complaint against Darlene Davis as owner of the Service Address and Kirby Ames as mortgagor in the Court of Common Pleas of Philadelphia County (Case ID: 100502395) in connection with the Line of Credit loan that Mr. Ames had obtained in March of 2008. Complainant Exhibit 1. Public records from the Court of Common Pleas of Philadelphia County (Case ID: 100502395) indicate that on December 17, 2012, Judge Annette M. Rizzo issued an Order memorializing Citizens Bank's agreement to discontinue the case against Ms. Davis and Mr. Ames, and reassigning the case to Wells Fargo.<sup>1</sup>

On or about January 3, 2013, Ms. Davis obtained a new Driver's License with the Service Address on it. On August 22, 2013, the Court of Common Pleas of Philadelphia County closed Citizens Bank's complaint against Ms. Davis and Mr. Ames (Case ID: 100502395).<sup>2</sup> Armed with the court's order, Ms. Davis tried to enter the Service Address in 2013, but found that she was locked out of it by the squatters. She testified that she was unable to attend to the squatter problem in 2014 due to other personal issues. She also explained that in August of 2015, she took matters into her own hands and had some of her acquaintances forcefully remove the squatters from the premises. The removal ended in physical altercations between Ms. Davis and the people squatting at her property, which necessitated police intervention. Once inside the Service Address, Ms. Davis noticed that the house was not in a livable condition because some

---

<sup>1</sup> I take official notice of the information appearing as public record in The Philadelphia Court Civil Docket Report for (Case ID: 100502395). 66 Pa.C.S. § 331(g) and 52 Pa.Code § 5.408.

<sup>2</sup> I take official notice of the information appearing as public record in The Philadelphia Court Civil Docket Report for (Case ID: 100502395). 66 Pa.C.S. § 331(g) and 52 Pa.Code § 5.408.

of the pipes were missing. In September of 2016, she was informed by PGW that she needed to pay approximately \$24,000 to have the gas service turned on at the Service Address. Ms. Davis averred that she has done everything in her power to correct the situation in which she found herself in after the purchase of the Service Address in 2008, and that she is not responsible for theft of service charges assessed against her by PGW. Tr. 27-31.

Helen Carter testified in support of the Complaint. She is Ms. Davis' mother and resides at 1835 South 23<sup>rd</sup> Street, Philadelphia, PA. Tr. 43-44. She testified that her daughter was defrauded by Mr. Ames into buying a house without proper disclosure or title search. Tr. 45, 47. She also stated that although her daughter lived with her on and off during the period September 2008 through June 2016, the Complainant had not used the 1835 South 23<sup>rd</sup> Street address for any documents or paperwork because she did not wish to affect Ms. Carter's income, which consisted of Social Security disability benefits. Tr. 44-45, 48.

In response to Ms. Davis' and Ms. Carter's testimonies, PGW put forth the testimonies of Tiffany Jones, Nicholas Nastasi, and Michael A. Wallace. Ms. Jones testified as a senior customer review officer for PGW. She explained that on September 24, 2002, PGW shut off gas service for the Service Address at the curb valve. On May 28, 2008, Ms. Davis contacted PGW seeking to have gas service turned on at the Service Address. PGW ran a credit check on Ms. Davis and informed her that she needed to pay a security deposit of \$380 before service could be initiated in her name. Also on May 28, 2008, Ms. Davis provided to PGW the gross income and number of people in the household and was instructed to apply for enrollment in PGW's Customer Responsibility Program.

Ms. Jones testified that on September 6, 2016, PGW technician, Nicholas Nastasi, visited the Service Address on a Curb Valve Safety Recheck order where he found gas on at the curb. Since he was unable to gain access to the property, Mr. Nastasi turned gas off at the curb with an expander and left a post termination notice on the door of the Service Address. On September 7, 2016, Ms. Davis contacted PGW as instructed by the post termination notice.

On September 7, 2016, PGW technician, Michael Wallace, visited the Service Address and removed Meter # 1418856 from the property. At the time of its removal, Meter # 1418856 was missing its Encoder Receiver Transmitter (ERT) head and had stopped at index 0. Mr. Wallace found the following gas appliances at the Service Address on September 7, 2016: a 7,500 BTU house heater, a 30,000 BTU automatic water heater, and 54,000 BTU automatic gas range.

Following Mr. Wallace's visit, Ms. Davis contacted PGW again on September 7, 2016, seeking the terms for reconnection of service at the Service Address. On September 8, 2016, Ms. Davis visited PGW's South Philadelphia Office again seeking the terms for reconnection of service at the Service Address and providing documentation of her legal case with Citizens Bank. Ms. Davis contacted PGW again on September 13, 2016, seeking the terms for reconnection of service at the Service Address.

On September 13, 2016, PGW informed Ms. Davis that she needed to pay \$23,056.21 to have the gas service turned on at the Service Address. The \$23,056.21 represents the charges for the unauthorized usage of gas that occurred at the Service Address during the period April 21, 2008, through September 6, 2016. Ms. Jones explained that, because the gas meter removed from the Service Address on September 6, 2016 was missing its ERT head, PGW based its calculation of unauthorized usage on historical usage at the property during the period July 25, 2001 through July 23, 2002.

Nicholas Nastasi testified as a field service specialist for PGW. Tr. 83. His testimony confirmed that of Ms. Jones with regard to the September 6, 2016 visit to the Service Address. Tr. 84-91. He also clarified that in recent years PGW has set in place a program which employs its Field Service Division (FSD) crews to do routine safety checks on curb valves that have been turned off. Tr. 86-87, see also PGW late-filed Exhibit 14.

Michael A. Wallace testified as a service technician for PGW's FSD division. Tr. 93. His testimony confirmed that of Ms. Jones with regard to the September 7, 2016 visit to the Service Address. He clarified that with the ERT head removed, the gas meter is unable to

record or transmit any usage at all. Tr. 96. The removal of the ERT head essentially turns the gas meter into a pipe bypass. Tr. 96. He also testified that there is currently no meter at the Service Address. Tr. 98. While he stated that Ms. Davis had been the one to let him into the property, he explained that “The house looked like a tornado went through there” and that “there was stuff through(sic) all over the place,” and when asked whether the house was livable, he stated that he “wouldn’t live like that.” Tr. 112.

Section 1407 of the Responsible Utility Customer Protection Act, 66 Pa.C.S.A §§ 1401 *et seq.*, allows a public utility to require the payment of any outstanding balance, or portion of an outstanding balance, if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there. 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. 66 Pa.C.S.A § 1407(d) and (e).

The Commission’s regulation at 52 Pa.Code § 56.35 incorporates the provisions of 66 Pa.C.S.A § 1407(d) and (e).

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

(b) A public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant, except as provided for in paragraphs (1) and (2).

(1) A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years from the date of the service request. The 4-year limit does not apply if the balance includes

amounts that the utility was not aware of because of fraud or theft on the part of the applicant.

(2) 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. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in this paragraph, used to determine the applicant's liability for any outstanding balance.

52 Pa.Code § 56.35. (Emphasis added).

Ms. Davis' deed for the Service Address bears the date April 21, 2008. By her own admission, Ms. Davis left the Service Address sometime in September of 2008. Therefore, she was the legal owner of the Service Address and in control of the property from April 21, 2008 through September 2008. Although she claimed that she started receiving foreclosure notices on the Service Address from the Citizens Bank in August 2008, Ms. Davis only submitted a request filed by Citizens Bank on May 18, 2010 to reinstate a complaint with the Court of Common Pleas of Philadelphia County at Case ID: 100502395, seeking Judgement in Mortgage Foreclosure. There is no record of when the prior complaint was originally filed by Citizens Bank. However, public records from the Court of Common Pleas of Philadelphia County (Case ID: 100502395) indicate that on December 17, 2012, Judge Annette M. Rizzo issued an Order memorializing Citizens Bank's agreement to discontinue the case against Ms. Davis and Mr. Ames, reassigning the case to Wells Fargo. The Court closed Citizens Bank's complaint against Ms. Davis and Mr. Ames (Case ID: 100502395) on August 22, 2013. Tr. 12.

Even if Ms. Davis was, as she claimed, a victim of Mr. Ames fraud scheme, her ownership issues with regard to the Service Address were resolved by Judge Rizzo's December 17, 2012 Order. By August 22, 2013, Ms. Davis had definite proof of her clear title to the Service Address. As the legal owner, Ms. Davis was or should have been in control of the

Service Address by August 22, 2013 and is therefore responsible for any charges accrued between August 23, 2013 and September 6, 2016.

In view of the above, I find that the Complainant has successfully carried her burden of proving, by a preponderance of the evidence, that she is not responsible for the theft of service charges accrued at her property from October 1, 2008 through August 22, 2013. I also find that she has failed to prove by a preponderance of the evidence that she is not responsible for the unauthorized gas usage charges accrued at her property from April 21, 2008 through September 30, 2008, and from August 23, 2013 through September 6, 2016.

Although I find Ms. Davis responsible for the unauthorized gas usage at the Service Address that occurred during the periods April 21, 2008 through September 30, 2008, and from August 23, 2013 through September 6, 2016, I also find that her claims that the Service Address was occupied by squatters prior to August 21, 2015 and was not in livable condition as of September 7, 2016, were corroborated by the police report submitted as part of Complainant late-filed Exhibit 3 and by the testimony of Mr. Wallace on the state of the property when he visited it on September 7, 2016. Consequently, I find that while Ms. Davis is responsible for unauthorized gas usage at her property, she did not willfully or knowingly engage in theft of gas service.

In *Darnell Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541, (Opinion and Order entered April 27, 2015), the Commission denied the complainant's request for a payment arrangement on charges related to theft of service by explaining that "To do otherwise sends the wrong message to all other law abiding ratepayers that those who willfully misuse utility service can receive the benefit of a delayed repayment period at no interest to repay a debt arising from the misuse of service." *Id.*, at 10. (Emphasis added). In the present case, there is no fraud, theft, or willful misuse of utility service on the part of Ms. Davis. Any benefit that she may have derived from the unauthorized usage of gas service was similar to what she would have derived had the PGW meter malfunctioned or failed, or had service been provided under a "user without a contract" account. This distinction is important because it may allow Ms. Davis to pursue a payment arrangement with PGW or with the Commission for the

charges accrued during the period in which she had legal control and ownership of the Service Address. See 66 § 1405. 52 Pa.Code § 56.35(b)(1).

### CONCLUSIONS OF LAW

1. The party filing the Complaint bears the burden of proving that she is entitled to relief from the Commission. 66 Pa.C.S.A. § 332(a)

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

4. Complainant successfully carried her burden of proving that she is not responsible for charges related to theft of gas service for the period October 1, 2008 through August 22, 2013. 66 Pa.C.S.A. § 1407(d) and (e); 52 Pa.Code §§ 56.2, 56.35(b).

5. Complainant successfully carried her burden of proving that she did not engage in fraud, theft or willful misuse of gas service during the periods April 21, 2008 through September 30, 2008, and August 23, 2013 through September 6, 2016. See, *Darnell Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541, (Opinion and Order entered April 27, 2015) 66 Pa.C.S.A. § 1407(d) and (e); 52 Pa.Code §§ 56.2, 56.35(b).

6. Complainant failed to carry her burden of proving that she is not responsible for charges related to unauthorized usage of gas covering the periods April 21, 2008 through September 30, 2008, and from August 23, 2013 through September 6, 2016. 66 Pa.C.S.A. § 1407(d) and (e); 52 Pa.Code §§ 56.2, 56.35(b).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant late-filed Exhibits 3 and 4 and PGW late-filed Exhibits 13 and 14 are admitted into the record in this matter.

2. That the formal Complaint filed by Darlene Davis against Philadelphia Gas Works at Docket No. F-2016-2573100 is granted in part, and denied in part.

3. That the formal Complaint filed by Darlene Davis against Philadelphia Gas Works at Docket No. F-2016-2573100 is granted in part with regard to Ms. Davis' claim that she is not responsible for charges accrued due to theft of service during the period October 1, 2008 through August 22, 2013.

4. That the formal Complaint filed by Darlene Davis against Philadelphia Gas Works at Docket No. F-2016-2573100 is granted in part with regard to Ms. Davis' claim that she did not engage in fraud, theft or willful misuse of gas service during the periods April 21, 2008 through September 30, 2008, and August 23, 2013 through September 6, 2016.

5. That the formal Complaint filed by Darlene Davis against Philadelphia Gas Works at Docket No. F-2016-2573100 is denied in part with regard to Ms. Davis' claim that she is not responsible for the unauthorized usage of gas during the periods April 21, 2008 through September 30, 2008, and August 23, 2013 through September 6, 2016.

6. That Philadelphia Gas Works shall recalculate Darlene Davis' makeup bill to cover only the periods April 21, 2008 through September 30, 2008, and August 23, 2013 through September 6, 2016.

7. That, within thirty (30) days of the date of this Initial Decision, Philadelphia Gas Works shall issue a new bill to Darlene Davis detailing how the bill was recalculated. A copy of this recalculated bill shall be served on the Commission's Bureau of Consumer Services.

Date: October 26, 2017

\_\_\_\_\_  
/s/  
Eranda Vero  
Administrative Law Judge