

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nelisa Gandy	:	
	:	
v.	:	F-2017-2608220
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision finds that the Philadelphia Gas Works properly billed the Complainant even though she inherited the property where the gas was provided, and the property was uninhabitable for a time.

HISTORY OF THE PROCEEDING

On May 25, 2017, Nelisa Gandy (Complainant or Ms. Gandy) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW). In the Complaint, Ms. Gandy contends that she is not responsible for a gas bill that she received from PGW because she acquired the property through her father's estate and the property was vacant and unfit for human habitation until January of 2017. The Complaint is a timely appeal of Bureau of Consumer Services Decision (BCS), Case Number 3506819.

On March 21, 2017, Respondent filed an Answer denying the material allegations of the Complaint

A Hearing Notice dated July 23, 2017 advised the parties that an initial hearing was scheduled for August 30, 2017, at 10:00 a.m.

A Prehearing Order was issued on August 4, 2017, reminding the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The initial hearing convened as scheduled. Ms. Gandy appeared *pro se* and testified in support of the Complaint. She presented a police report as an exhibit. (Complainant 1).

Graciela Christlieb, Esq. represented the Respondent, and presented the testimony of Jessica Glace, Senior Customer Review Officer at PGW. The Respondent sponsored the following six exhibits:

PGW 1 Shut off documentation
PGW 2 Bureau of Revenue Printout
PGW 3 Meter Read Query
PGW 4 Bill
PGW 5 PGW letter to Ms. Gandy dated March 26, 2017
PGW 6 BCS decision

All exhibits were admitted into the record. The record in this matter closed on September 14, 2017.

FINDINGS OF FACT

1. The Complainant is Nelisa Gandy.
2. The service address at issue is 4454 North Cleveland Street, Philadelphia, Pennsylvania and it is owned by Ms. Gandy. (Tr. 5-6).

3. The Respondent is Philadelphia Gas Works.
4. Ms. Gandy inherited the service address from her father, who passed away in 2012. (Tr. 6).
5. PGW shut off the gas at the service address on April 1, 2013 by turning off the gas at the curb valve. (Tr. 21; PGW 1).
6. At the time of the shut off, the meter read 4802 ccfs.
7. Ms. Gandy became the owner of the service address on May 3, 2015. (Tr. 11; PGW 2).
8. The property was uninhabitable when acquired by Ms. Gandy. (Tr. 7).
9. Ms. Gandy rehabilitated the home and purchased a stove and hot water heater, had the furnace and chimney repaired and updated the electrical system during the years 2015 and 2016. (Tr. 7).
10. On October 17, 2015, the meter at the service address read 4802 ccfs. (PGW 3).
11. On November 11, 2015, the meter at the service address read 4949 ccfs (PGW 3).
12. On November 11, 2015, PGW sent a technician to the service address to conduct an unauthorized usage investigation. (PGW 1).
13. The investigation on November 11, 2015 could not be completed and the service could not be shut off because a car was parked on the curb valve box and the technician was unable to enter the service address. (Tr. 24, PGW 1).

14. On January 8, 2016, a 72-hour shut off notice was left at the service address. (Tr. 25, PGW 1).

15. On February 10, 2016, the meter at the service address read 5272 ccfs.

16. On February 10, 2016, during an unbilled usage investigation at the service address, the gas was found on and the technician shut off the gas at the curb box and left a post termination notice. (Tr.; 25, PGW 1).

17. On an unknown date in 2017, Ms. Gandy contacted PGW to apply for gas service at the service address, at which time PGW personnel informed Ms. Gandy that to begin her service, she would have to pay for unauthorized gas usage at the service address. (Tr. 5).

18. On March 13, 2017, PGW sent Ms. Gandy a bill for \$750.67. (PGW 4).

19. On March 26, 2017, PGW sent Ms. Gandy a informing her that the \$750.67 billed was for unauthorized usage for the period of October 2015 to February 10, 2016. (PGW 5).

DISCUSSION

Any offense alleged by the Complainant must be a violation of the Public Utility Code (Code), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. 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 Code, 66 Pa.C.S.A. § 332(a).

In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) 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.A. § 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 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).

The Complainant contests PGW requiring her to pay for unauthorized gas usage as a condition of enrolling her as a customer and starting gas service in her name at the service address. She contends that she inherited the property, that it was uninhabitable until January of 2017, that PGW should have shut off the service when the company found it on and that she contacted the police upon learning of the unauthorized usage.

PGW contends that the Complainant should pay for the unauthorized usage before the gas at the service address is connected. PGW is seeking \$750.67 for 470 ccfs of gas. This is based on the difference between a service address meter reading on October 17, 2015 of 4802 ccfs and a February 10, 2016 reading of 5272 ccfs. (PGW 3). The evidence does not support a finding for the Complainant.

Ms. Gandy's credible testimony and the record support finding that she inherited the property; she did not own the property until mid-2015; she did not occupy the property at any time; the property required extensive work to make it habitable; and she contacted the police to report unauthorized usage once she was notified by PGW. (Tr. 6-9; Complainant 1). However, evidence of the dates of the gas usage and the testimony of the Complainant and record of her ownership and when rehabilitation work was done on the property support a finding that the Complainant is responsible for the gas service at issue.

Complainant is an Applicant for service. She is "[a] natural person at least 18 years of age not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested." 52 Pa. Code § 56.2 (1).

Regarding payment of an outstanding balance, the Commission's regulation at 52 Pa. Code § 56.35(a) provides:

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.

PGW sent the Complainant a bill for the usage at issue. Complainant mistakenly believed that PGW was seeking payment for the period before she became owner on May 3, 2015 and that there was no gas usage because no one lived at the property. (Tr. 5-8). PGW is actually seeking payment for, and presented evidence of, gas usage during the period from October 2015 to February 10, 2016.

The PGW record of meter readings at the service address shows usage of 470 ccfs during the period in question. (PGW 3). Also, Complainant's testimony that she had gas appliances installed and repaired - a water heater, a gas furnace, a gas stove - in 2015 and 2016 supports a finding that although no one lived there, gas was used at the service address on her behalf during that period, most likely by installers and repairmen. (Tr. 7).

Thus, as owner, the Complainant is legally responsible to pay for the usage at the property. A public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982). PGW has not committed a violation by asking the Complainant to pay for the gas used at the service address in 2015 and 2016 before turning on gas to the service address. 52 Pa. Code § 56.35(a).

Section 56.35(b)(3) provides that any outstanding residential account with the public utility may be amortized in accordance with § 56.191. PGW will be directed to meet with the Complainant to discuss amortization of the outstanding amount in accordance with that section.¹

Ms. Gandy also contends that PGW should have shut off the gas at the time that it found unauthorized usage. The record does not support finding a violation.

At the time that PGW shut the meter off in 2013, the meter read 4802 ccfs. The meter read remained at 4802 ccfs until November 4, 2015, when there was an increase to a reading of 4849 ccfs. (PGW 3). On November 11, 2015, a PGW technician was sent to the residence to conduct an unauthorized usage investigation. As the service address was unoccupied, the technician could not enter the premises to shut off the service and the technician could not shut off the service at the curb because there was a car parked at the curb. (PGW 1). A technician visited the service address on January 8, 2016 and left a 72-hour shut off notice. A technician again visited the service address to conduct an unauthorized usage investigation on February 10, 2016. (PGW 1). By this time, the meter read 5272 ccfs. During the February 10,

¹ This will allow the Complainant to discuss options for paying the amount due in increments over time rather than the entire amount becoming due immediately.

2016 investigation, the gas service was shut off at the curb and a post termination notice was left at the premises. (PGW 1). The actions of PGW were reasonable under the circumstances and were not in violation of the Code, the Commission's regulations, or an outstanding order of the Commission. Complainant cannot prevail here.

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 had the burden of proof. 66 Pa.C.S. § 332(a).
3. Complainant is an Applicant for service. 52 Pa. Code § 56.2 (1).
4. 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. 52 Pa. Code § 56.35.
5. Complainant as owner is responsible to pay for the residential service provided.
6. The outstanding amount may be amortized in accordance with 52 Pa. Code 56.35(b)(3) and § 56.191.

