

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gloria Moffitt	:	
	:	
v.	:	F-2016-2579258
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Complainant’s formal Complaint in part for the time period from December 16, 2013, to October 31, 2014 because she established that she was not living at the service address during that timeframe. This Initial Decision also dismisses the Complaint for the time period from November 1, 2014, to May 3, 2016, because she failed to sustain her burden of proof to establish that Philadelphia Gas Works wrongly terminated service for theft of service or erred in billing for unbilled usage at the Service Address.

HISTORY OF THE PROCEEDING

On December 7, 2016, Gloria Moffitt (Complainant or Ms. Moffitt) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that her gas service was shut off due to a house fire at 5581 Master Street, Philadelphia, Pennsylvania 19131 (Service Address). She also asserted that when she requested that her service

be restored, the technician told her he could not do so due to a “grounding” issue and removed the meter. As relief, the Complainant requested service be restored in her name.

This matter is an appeal of a decision from the Bureau of Consumer Services (BCS) dated October 12, 2016, at Case No. 3482950 which dismissed the informal complaint of the Complainant.

On December 29, 2016, Respondent filed an Answer indicating that the Complainant’s service was not restored on May 3, 2016 due to unauthorized usage and the meter was removed. The Respondent asserted that the gas service at the Service Address had been shut off at the Complainant’s request on December 16, 2013, and should have remained off through the Complainant’s request on May 3, 2016, to turn on service.

By Hearing Notice dated February 23, 2017, a hearing was scheduled for Friday, March 24, 2017 at 10:00 a.m., and the matter was assigned to me.

On February 28, 2017, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on March 24, 2017. Complainant appeared *pro se* and testified. The Complainant also presented the testimony of Stephen Bass, Complainant’s husband. The Complainant offered one exhibit which was entered into the record. The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Glace, a Senior Customer Review Officer, and Michael Trainor, a Field Service Technician. The Respondent offered seven exhibits which were entered into the record.

At the conclusion of the hearing, I determined that the Complainant should be allowed to present additional documentary evidence regarding her living arrangements as a late filed

exhibit. I gave the Complainant until April 21, 2017, to provide such evidence and allowed PGW until April 28, 2017, to file written objections to the Complainant's late filed exhibit.

The Complainant did not submit the late filed exhibit by April 21, 2017.

The hearings resulted in a hearing transcript consisting of 79 pages. The record closed on May 2, 2017, when I received the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Gloria Moffitt.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Service Address is 5518 Master Street, Philadelphia, Pennsylvania 19131 (Service Address). Tr. 8.
4. The Complainant's husband, Stephen Bass, owns the Service Address.
Tr. 8.
5. The Complainant has been residing at the Service Address for at least six or seven years. Tr. 8.
6. The Complainant had gas service in her name at the Service Address. Tr. 19-20.
7. The Complainant has had an account with PGW for the Service Address since at least March 12, 2012. PGW Exh. 4.
8. In October 2013, the Complainant had a house fire at the Service Address.
Tr. 9, 15, 23, 24.

9. On December 16, 2013, PGW turned off the gas service at the Service Address at the Complainant's request because of the house fire. Tr. 45-46; PGW Exh. 1.

10. On January 14, 2014, PGW issued a final bill on the Complainant's account. Tr. 66-67; PGW Exh. 3.

11. The Complainant resided at 4200 Parkside Avenue, Unit 2R, Philadelphia, Pennsylvania from October 1, 2013 to October 31, 2014. Tr. 13, 17, 23, 24-25; Complainant Exh. 1.

12. At some point after the house fire, the Complainant and her husband had contractors at the Service Address doing repair work. Tr. 25.

13. The Complainant returned to the Service Address sometime after October 31, 2014. Tr. 12, 25, 26.

14. On May 3, 2016, Michael Trainor, Field Service Technician, went to the Service Address for a turn-on. Tr. 31-32; PGW Exh. 2.

15. Mr. Trainor found the gas on at the Service Address at the curb valve, but according to PGW records, the gas service should have been off. Tr. 32-33; PGW Exh. 2.

16. Mr. Trainor shut off the gas service with locking plugs and a bike lock on the meter valve. Tr. 33; PGW Exh. 2.

17. Mr. Trainor found the meter on the floor in the basement. Tr. 33; PGW Exh. 2.

18. Mr. Trainor found a gas house heater, a gas dryer, and a gas range at the Service Address. Tr. 34; PGW Exh. 2.

19. Mr. Trainor got a natural gas reading when he turned on the gas range, which confirmed there was natural gas going to the range. Tr. 35; PGW Exh. 2.

20. Mr. Trainor also found a grounding issue which was related to the installation of a new fuel line and the type of wiring that had to be connected to the electric valve in order for the gas service to be safely turned on at the Service Address. Tr. 37, 39; PGW Exh. 2.

21. There was evidence of tampering at the Service Address because the gas was found on and the meter was on the floor. Tr. 35.

22. PGW calculated a bill for unauthorized usage using historical usage. Tr. 46; PGW Exh. 4.

23. The historical usage used to calculate the unauthorized usage was from June 11, 2012, to May 9, 2013, when the Complainant was the customer of record for the account. Tr. 46; PGW Exh. 4.

24. On May 5, 2016, the Complainant was billed for unauthorized usage from December 16, 2013, to May 3, 2016, in the amount of \$4,734.28. Tr. 47; PGW Exh. 3, 4.

25. The total balance on the Complainant's account is \$6,958.04 which includes the unauthorized usage of \$4,734.28, and a prior account balance of \$2,223.76. Tr. 49; PGW Exh. 3.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). That is, by presenting evidence 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). 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*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

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*, 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).

During the hearing, the Complainant denied tampering with the utility service at the Service Address. However, the Respondent asserted that Ms. Moffitt was the responsible party because she was the customer of record at the Service Address and the service was properly turned off by PGW when it found evidence of tampering with the meter. Tr. 32-33, 45-46; PGW Exh. 1, 2.

In support of her Complaint, the Complainant testified that her husband, Stephen Bass, owns the Service Address. Tr. 8. She also testified that there was a house fire at the Service Address, sometime in October 2013, although she and her husband gave conflicting dates as to when the fire took place. Tr. 9, 15, 23, 24. PGW records and testimony establish that on December 16, 2013, it turned off gas service at the Service Address at the Complainant's request because of the house fire. Tr. 45-46; PGW Exh. 1. The Complainant testified that she resided at 4200 Parkside Avenue, Unit 2R, Philadelphia, Pennsylvania from October 1, 2013 to October 31, 2014. Tr. 13, 17, 23, 24-25; Complainant Exh. 1. Although the dates are unclear, at some point after the house fire, the Complainant and her husband had contractors at the Service Address doing repair work. Tr. 25. Again, the Complainant and her husband were unable to provide a specific date, but the evidence indicates that the Complainant returned to the Service Address sometime after October 31, 2014. Tr. 12, 25, 26; Complainant Exh. 1. The Complainant requested that service be restored at the Service Address in May 2016. PGW Exh 2.

To dispute the allegations of the Complainant, PGW presented the testimony of Field Service Technician Michael Trainor. On May 3, 2016, Mr. Trainor went to the Service Address for a turn-on. Tr. 31-32; PGW Exh. 2. Mr. Trainor found the gas on at the Service Address at the curb valve. Tr. 32-33; PGW Exh. 2. The gas service was supposed to be off at the Service Address. Tr. 33; PGW Exh. 2. Mr. Trainor shut off the gas service with locking plugs and a bike lock on the meter valve. Tr. 33; PGW Exh. 2. Mr. Trainor also found the meter on the floor. Tr. 33; PGW Exh. 2. Mr. Trainor found a gas house heater, a gas dryer, and a gas range at the Service Address. Tr. 34; PGW Exh. 2. Mr. Trainor got a natural gas reading when he turned on the gas range. Tr. 35; PGW Exh. 2. Mr. Trainor testified that the gas reading indicated there was natural gas going to the range. Tr. 35. Mr. Trainor also found a grounding

issue which was related to the installation of a new fuel line and the type of wiring that had to be connected to the electric valve in order for the gas service to be safely turned on at the Service Address. Tr. 37, 39; PGW Exh. 2. Mr. Trainor indicated that there was evidence of tampering at the Service Address because the gas was found on and the meter was on the floor. Tr. 35.

PGW also presented the testimony of Jessica Glace, a Senior Customer Review Officer. Ms. Glace testified that on December 16, 2013, PGW turned off gas service at the Service Address at the Complainant's request because of the house fire. Tr. 45-46; PGW Exh. 1. On January 14, 2014, PGW issued a final bill on the Complainant's account. Tr. 66-67; PGW Exh. 3.

Ms. Glace testified that PGW calculated a bill for unauthorized usage using historical data. Tr. 46; PGW Exh. 4. She indicated that the historical data used to calculate the unauthorized usage was from June 11, 2012, to May 9, 2013, when the Complainant was the customer of record for the account. Tr. 46; PGW Exh. 4. Ms. Glace testified that on May 5, 2016, the Complainant was billed for unauthorized usage from December 16, 2013, to May 3, 2016, in the amount of \$4,734.28. Tr. 47; PGW Exh. 3, 4. Ms. Glace also indicated that the total balance on the Complainant's account is \$6,958.04, which includes the unauthorized usage of \$4,734.28, and a prior account balance of \$2,223.76. Tr. 49; PGW Exh. 3.

The Complainant has met her burden of establishing that she was not responsible for any unauthorized usage from December 16, 2013, to October 31, 2014. The Complainant presented substantial evidence that she was not living at the Service Address, but was instead living at 4200 Parkside Avenue, through the testimony she presented and the partial lease agreement that she submitted for that timeframe. PGW issued a final bill on her account in January 2014. PGW did not present any evidence to rebut this portion of the Complainant's evidence. PGW did not present any evidence to establish when the tampering took place. Therefore, the Complainant's Complaint is granted in part for the timeframe from December 16, 2013 to October 31, 2014.

However, PGW indicates that the Complainant is responsible for the unauthorized usage until May 3, 2016 when it discovered that the gas was on at the Service Address. The Complainant indicates that she was not residing at the Service Address at that time and did not have anything to do with the alleged tampering.

Commission regulations regarding immediate termination of service at 52 Pa.Code § 56.98(a)(3) provide in pertinent part that “[a] public utility may immediately terminate service for any of the following actions by the customer . . . [t]ampering with meters or other public utility equipment.” Further, the Commission’s regulations indicate that as a condition of restoring service to a customer, the public utility can require the payment of the outstanding balance and the four-year statute of limitations does not apply to instances of fraud or theft. 52 Pa.Code § 56.191(d).

Although the Complainant contends that she had nothing to do with the tampering after October 31, 2014, I am not persuaded by her testimony. “Mere bald assertions . . . do not constitute evidence.” *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlt. 2000); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, R-00994808, (Opinion and Order entered March 3, 2000). The Complainant had service in her name until December 16, 2013, and her husband owns the Service Address. While the Complainant contends that she was still living at 4200 Parkside Avenue until at least 2015, the Complainant was not able to present any lease or other documentation to establish that she was still living at 4200 Parkside Avenue or another address after October 31, 2014. Moreover, the Complainant’s husband acknowledged that at some point after the house fire at the Service Address, they had contractors at the premises to do repair work. However, neither the Complainant nor her husband were able to establish when the Complainant returned to the Service Address after the repair work was completed. The Complainant did not present any evidence regarding when the work at the Service Address took place or when it was completed, such as receipts from contractors or other documentation.

Further, PGW presented the testimony of Mr. Trainor which established that he found the gas on at the Service Address on May 3, 2016, when it had been shut off by PGW on December 16, 2013. Mr. Trainor indicated that the gas should have been off and that the meter was on the floor. Mr. Trainor also testified that there was gas found going to the range which was evidence that the gas had been used. Mr. Trainor's testimony established that because the gas was found on and the meter was on the floor, there was evidence of tampering at the Service Address.

Therefore, PGW was able to demonstrate that there was unauthorized usage at the Service Address because the gas was on at the Service Address, the meter was on the floor and there was natural gas going to the range. PGW also found a grounding issue which was related to the installation of a new fuel line and the type of wiring that had to be connected to the electric valve in order for the gas service to be safely turned on at the Service Address. Tr. 37, 39; PGW Exh. 2. The Company did not violate a Commission statute, regulation or order by charging the Complainant for the unauthorized usage starting after October 31, 2014 as there is no evidence that she was residing elsewhere after that date. As such, the Complainant is responsible for the unauthorized usage at the Service Address from November 1, 2014, to May 3, 2016. PGW is directed to recalculate the bill for unauthorized usage from November 1, 2014, to May 3, 2016. Accordingly, the Complainant's Complaint must be dismissed for this time period.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).
3. 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.

4. 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).

5. A public utility may immediately terminate service when a customer tampers with meters or other public utility equipment. 52 Pa.Code § 56.98(a)(3).

6. As a condition of restoring service to a customer, the public utility can require the payment of the outstanding balance and the four-year statute of limitations does not apply to instances of fraud or theft. 52 Pa.Code § 56.191(d).

7. The Complainant failed to meet her burden of demonstrating that there was no meter tampering at the Service Address. 52 Pa.Code § 56.98(a)(3).

8. The Complainant met her burden of demonstrating that she did not reside at the Service Address from December 16, 2013, to October 31, 2014. 52 Pa.Code § 56.191(d).

9. The Complainant failed to meet her burden of establishing that the Philadelphia Gas Works erred in billing her for unbilled usage at the Service Address from November 1, 2014, to May 3, 2016. 52 Pa.Code § 56.191(d).

