

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Akeem Simmons, Yvonne Whisenant and	:	
Ashley Mowery	:	
	:	
v.	:	C-2017-2605783
	:	
UGI Utilities Inc.	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision dismisses a formal complaint filed against a natural gas distribution company wherein the complainants averred that the company incorrectly terminated service at the service address and that there are incorrect charges on the bill. The complaint is dismissed because the company correctly terminated service at the service address upon finding that the meter had been tampered with and correctly charged the complainants for restoration of the service. Additionally, the complaint is dismissed because the complainants have not satisfied their burden to demonstrate they are entitled to a payment agreement for the outstanding amount owed.

HISTORY OF THE PROCEEDING

On May 10, 2017, Akeem Simmons, Yvonne Whisenant and Ashley Mowery jointly filed a formal complaint against UGI Utilities, Inc. (UGI) with the Pennsylvania Public

Utility Commission (Commission), docket number C-2017-2605783.¹ The complaint noted that UGI terminated utility service at the service address, that a payment agreement is requested and that there are incorrect charges on the bill. Attached to the complaint was additional information regarding the termination of services and the alleged incorrect charges on the bill, as well as detail regarding the relief requested. Also attached to the complaint was nearly thirty pages of additional documents and printouts of emails in support of the complaint.

The formal complaint was served on UGI electronically by the Commission's Secretary.²

On June 13, 2017, UGI filed an answer to the formal complaint. In the answer, UGI admitted that it terminated gas service to the service address on February 7, 2017 but denied that there are incorrect charges on the bill. UGI added that the company inspected the service address on February 7, 2017 and discovered that the meter had been removed and that a bypass device had been rigged to steal natural gas service. UGI added that, for safety reasons, it disconnected the service to the service address by cutting service at the curb valve. UGI added that, since there is currently no service at the service address, the complainant is an applicant and UGI is entitled to restoration fees in the amount of \$4,573.41.

On June 19, 2017, a telephone hearing notice was issued setting an initial telephonic hearing for this matter for Tuesday, August 22, 2017 at 10:00 a.m. and assigning me as the presiding officer. A prehearing order dated June 21, 2017 was issued setting forth various rules that would govern the hearing. On July 19, 2017, a hearing type change notice was issued changing the initial telephonic hearing to a call-in telephonic hearing.

On August 22, 2017, the hearing convened as scheduled. Akeem Simmons, Yvonne Whisenant and Ashley Mowery appeared on behalf of the complaint. Each provided

¹ Although the original caption only included Mr. Simmons, the caption is being amended as part of this decision to reflect Ms. Whisenant and Ms. Mowery as complainants.

² UGI has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been affected on May 24, 2017.

oral testimony and Ms. Whisenant presented three exhibits in support of the complaint that were all admitted into the record. Larry Crayne, Esquire appeared on behalf of UGI and presented three witnesses who sponsored ten exhibits that were all admitted into the record. A transcript of 136 pages was created. The transcript was submitted to the Commission on September 13, 2017.

On September 20, 2017, Ms. Whisenant submitted a letter requesting that an additional in-person hearing be scheduled “to hear additional facts, objections and rebuttals that [she] was not able to present at the telephonic hearing conducted on 22 August 2017.” Ms. Whisenant added: “If you cannot grant a courtroom hearing, then please add these reasons and facts to the formal case record.” Ms. Whisenant then articulated 12 points and a conclusion over four single-spaced, typed pages. Ms. Whisenant also included “a list of persons to be subpoenaed as witnesses if the request for a courtroom hearing is granted.” Ms. Whisenant’s letter was treated as a petition to reopen the record.

On September 26, 2017, UGI filed a response to Ms. Whisenant’s September 20, 2017 petition. UGI requested that the record be closed and that an appropriate initial decision be issued. UGI briefly responded in general to Ms. Whisenant’s petition by arguing that the material raised in the petition is neither relevant nor material to the disposition of the complaint. UGI added that the additional matters raised by Ms. Whisenant may have relevance to a civil action between the parties but are not germane to the formal complaint.

Ms. Whisenant’s petition to reopen the record was granted in part and denied in part via order dated November 6, 2017. The additional arguments raised in the petition, and UGI’s answer to the petition, were admitted into the record but the request for an additional in-person hearing and for subpoenas was denied.

The record in this proceeding closed on November 6, 2017 when the order granting in part and denying in part Ms. Whisenant’s petition to reopen the record was issued. The complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The complainants in this case are Akeem Simmons, Yvonne Whisenant and Ashley Mowery.
2. The respondent in this case is UGI Utilities, Inc.
3. The service address is 429 Crescent Street, Harrisburg, PA.
4. Ms. Mowery purchased the property in September 2015. Tr. 53.
5. Ms. Mowery became incarcerated on October 10, 2015 and remains incarcerated. Tr. 53.
6. Ms. Mowery did not have the home inspected when she purchased it. Tr. 53.
7. Ms. Whisenant manages the property owned by Ms. Mowery at the service address. Tr. 24.
8. Ms. Whisenant reported suspicious activity at the service address to the Harrisburg police in September 2015. Tr. 28.
9. In October 2016, Ms. Whisenant noticed that there were squatters, vandalism and things missing at the service address. Tr. 28-29.
10. Ms. Whisenant hired a contractor to install a new water heater. Tr. 30.
11. Mr. Simmons signed a lease in November 2016 to rent the home from Ms. Mowery and moved in to the home in January 2017. Tr. 8-11.

12. Mr. Simmons discovered that squatters were living in the home and had robbed the home before he moved in. Tr. 9.

13. The heat was turned off at the service address in February 2017. Tr. 10.

14. Ms. Whisenant called UGI regarding service for the furnace on February 7, 2017. Tr. 87.

15. Ms. Whisenant called UGI several times after the theft of service was discovered. Tr. 87.

16. On February 17, 2017, Mr. Simmons called UGI to request gas service at the property and a UGI technician visited the property and noticed that there was a problem with the furnace and that the meter had been tampered with. Tr. 10, 93.

17. Mr. Simmons did not have the gas service placed in his name when he moved in in January 2016 because the heat was already on. Tr. 13.

18. Mr. Simmons let the UGI technician in the home on February 7, 2017 after he had called UGI to let them know the heat was not working. Tr. 19.

19. The technician informed Mr. Simmons that the meter had been tampered with. Tr. 20.

20. UGI terminated service to the service address after the meter was found to have been tampered with. Tr. 20.

21. In June 2017, Mr. Simmons moved out of the home at the service address. Tr. 18.

22. Whisenant Exhibit Number 1 is a print-out of a string of emails between Ms. Whisenant and Captain Gabriel Olivera from the Harrisburg Bureau of Police in January 2017. Tr. 39; Whisenant Exh. No. 1.

23. Whisenant Exhibit Number 2 is a chronology of events regarding Ms. Whisenant's involvement with Ms. Mowery's legal and personal issues from April 2016 to July 2017. Tr. 40; Whisenant Exh. No. 2.

24. Whisenant Exhibit Number 3 is the formal complaint filed by Mr. Simmons, Ms. Whisenant and Ms. Mowery on May 10, 2017 that initiated this proceeding, along with attachments providing additional information regarding the termination of services, the alleged incorrect charges on the bill, details regarding the relief requested and nearly thirty pages of additional documents and printouts of emails in support of the complaint. Tr. 42-45; Whisenant Exh. No. 3.

25. Ms. Whisenant had power of attorney for the property at the service address and was responsible to collect rent and make any repairs. Tr. 46-47.

26. Ms. Whisenant made several calls to the Harrisburg police in September 2016 when she realized there were problems with the property, but the police did not respond. Tr. 49-50.

27. Richard Klopp is a revenue protection investigator for UGI. Tr. 59.

28. Mr. Klopp visited the service address on June 22, 2016 because a report was generated showing usage on an inactive meter. Tr. 60.

29. Mr. Klopp found the curb valve was on and gas was passing through to the meter which is why the inactive meter was registering usage. Tr. 60.

30. After Mr. Klopp investigated the property he had a UGI technician shut the curb valve off. Tr. 60-61, 65.

31. Mr. Klopp visited the service address on February 7, 2017 because another UGI technician discovered a bypass on the meter. Tr. 61.

32. Mr. Klopp found the meter lying on the floor and noticed a bypass. Tr. 61.

33. When Mr. Klopp arrived at the service address on February 7, 2017, the police and fire company were present and the UGI technician removed the bypass. Tr. 63.

34. The situation at the service address was unsafe because the curb valve was broken. Tr. 64.

35. UGI Exhibit 8.1 is a photograph of the curb valve at the service address in the on position. Tr. 65; UGI Exh. 8.1

36. Mr. Klopp has no idea how the curb valve could have been turned on between when he turned it off on June 22, 2016 and when he visited the property on February 7, 2017. Tr. 66.

37. UGI Exhibit 8.2 is a photograph of the UGI gas meter on the ground. Tr. 66; UGI Exh. 8.2.

38. UGI Exhibit 8.3 is a photograph of gastite pipe bypass and no meter where the meter should be located. Tr. 67; UGI Exh. No. 8.3

39. UGI Exhibit 8.4 is a photograph of the meter on the floor in the basement. Tr. 67; UGI Exh. No. 8.4.

40. UGI Exhibits 8.1, 8.2, 8.3 and 8.4 were taken by Mr. Klopp when he visited the property on February 7, 2017. Tr. 68.

41. Benjamin Braddock is a utility customer service mechanic and emergency responder for UGI. Tr. 70.

42. Mr. Braddock visited the service address on February 7, 2017 and found that the curb valve was in the on position which indicates gas is coming in the house. Tr. 71.

43. Mr. Braddock saw that the curb valve was broken. Tr. 71.

44. Mr. Braddock obtained the telephone number of the occupants of the house to gain access but could not gain access. Tr. 71-72.

45. When UGI receives a report that a bypass has been installed, the meter has been removed and there is a broken curb valve, the company needs to enter the property to make sure it is safe. Tr. 72.

46. Upon entering the home, Mr. Braddock found that a corrugated stainless-steel tube had been installed from the gas appliance to where the meter should have been installed and the gas meter was on the floor. Tr. 74.

47. Mr. Braddock determined that the situation was not safe because of the risk of gas leaks due to the tampered meter. Tr. 74.

48. Mr. Braddock disconnected the bypass and capped the service line coming through the front basement wall to prevent any bypass or additional gas flowing into the house. Tr. 74-75.

49. Mr. Braddock also requested that the UGI construction and maintenance department remove the curb valve and cut off all gas flow to the property. Tr. 75.

50. To restore service to the service address, a new service line and meter will have to be installed. Tr. 76-77.

51. Brian Huber is the Principle Credit and Collections Leader at UGI and supervises and manages the Revenue Protection Department that is responsible for theft investigations. Tr. 84.

52. The service at the service address was terminated in May of 2016 for nonpayment. Tr. 85.

53. Mr. Braddock explained to Ms. Whisenant that service was terminated for safety reasons. Tr. 88.

54. Mr. Braddock explained to Ms. Whisenant that the Revenue Protection Department investigated the service address because there was usage being reported on an inactive meter. Tr. 89.

55. Mr. Braddock explained to Ms. Whisenant various details of the company's investigation. Tr. 89-93.

56. UGI Exhibit Number 1 is a statement of account for the service address in the name of Ashley Mowery from October 2015 through May 2016 when the service was terminated and shows a balance of \$500.02. Tr. 94; UGI Exh. No. 1.

57. UGI Exhibit Number 2 is a property and tax record for Dauphin County indicating that Ashley Mowery is the owner of the property at the service address. Tr. 95; UGI Exh. No. 2.

58. UGI Exhibit Number 3 is a copy of the month-to-month rental agreement between Ashley Mowery and Akeem Simmons for the property at the service address. Tr. 95-96; UGI Exh. No. 3.

59. UGI Exhibit Number 4 is the power of attorney Ms. Mowery gave to Ms. Whisenant regarding the property at the service address. Tr. 96; UGI Exh. No. 4.

60. UGI Exhibit Number 5 is the letter issued by UGI's Revenue Protection Department noting that the property at the service address was found to have company assets that have been tampered with. Tr. 96-79; UGI Exh. No. 5.

61. UGI Exhibit Number 6 is a portion of UGI's tariff containing the definition of an applicant. Tr. 97; UGI Exh. No. 6.

62. UGI Exhibit Number 7 is a portion of UGI's tariff explaining customers' responsibilities for company property that is applied in theft of service situations. Tr. 98, 100; UGI Exh. No. 7.

63. UGI Exhibit Number 9 is a summary of the theft of service and service restoration charges for the service address totaling \$4,573.41. Tr. 100-104; UGI Exh. No. 9.

64. UGI Exhibit Number 10 is a copy of the BCS decision regarding an informal complaint filed by Mr. Simmons on February 17, 2017 ruling in UGI's favor. Tr. 105; UGI Exh. No. 10.

65. Whisenant Exhibit Number 4 is a letter dated September 20, 2017 from Ms. Whisenant to the presiding officer articulating additional reasons and facts to be admitted into the record in support of the complaint. Whisenant Exh. No. 4.

66. UGI Exhibit Number 11 is a letter dated September 26, 2017 from counsel for UGI to the presiding officer articulating the response from the company to Whisenant Exhibit Number 4.

DISCUSSION

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Simmons, Ms. Mowery and Ms. Whisenant jointly filed a complaint averring, among other things, that UGI wrongly terminated service at the service address, there are incorrect charges on the bill and requesting a payment arrangement. Mr. Simmons, Ms. Mowery and Ms. Whisenant requested that service be restored to the service address and to be reimbursed for certain charges on the bill. Mr. Simmons, Ms. Mowery and Ms. Whisenant, therefore, have the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a

preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth 1982).

In addition, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

In this case, Mr. Simmons, Ms. Mowery and Ms. Whisenant argued that the service at the service address was incorrectly terminated on February 7, 2017. They further argued that they were not given proper notice of termination and that squatters had vandalized and stolen from the service address. The complainants also argued that there were incorrect charges on the bill. For relief, the complainants requested that they want the gas service restored, incorrect charges corrected and to be given a payment arrangement. As discussed further below, the complainants also raised several additional issues both in their complaint, during the hearing and in their exhibits filed after the hearing.

In response, UGI presented three witnesses in support of the company's position that the complaint is without merit and should be dismissed in its entirety. Those witnesses were: Richard Klopp, a revenue protection investigator for UGI; Benjamin Braddock, a utility customer service mechanic and emergency responder for UGI; and, Brian Huber, a principle credit and collections leader at UGI who manages the revenue protection department. These witnesses presented several exhibits during hearing in support of the company's position.

The complaint will be dismissed because the complainants have failed to satisfy their burden to demonstrate by a preponderance of the evidence that UGI violated a provision of

the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company.

Termination of Service

In their complaint, the complainants argued that service was inappropriately terminated at the service address due to tampering that was done prior to when Mr. Simmons occupied the property. The complainants also averred that they were not given notice prior to the termination. The complainants attached multiple documents to the complaint in support of their position that service at the service address was inappropriately terminated. These documents provide a detailed history of the property at the service address, including when the property was vacant due to Ms. Mowery's incarceration and likely vandalism by squatters, and where admitted into the record in support of the complaint. These arguments also comprised the majority of the complainants' testimony and exhibits provided during the hearing.

To begin, section 56.98 of the Commission's regulations allows utilities to immediately terminate service for unauthorized use, fraud, tampering or tariff violations. Section 56.98 states as follows:

§ 56.98. Immediate termination for unauthorized use, fraud, tampering or tariff violations.

- (a) A public utility may terminate service for any of the following actions by the customer:
 - (1) Unauthorized use of the service delivered on or about the affected dwelling.
 - (2) Fraud or material misrepresentation of the customer's identity for the purpose of obtaining service.
 - (3) ***Tampering with meters or other public utility equipment.***
 - (4) Violating tariff provisions on file with the Commission which endanger the safety of a person or the integrity of the public utility's delivery system.

52 Pa.Code § 56.98(a) (emphasis added). In this case, UGI has presented substantial evidence that it terminated service at the service address because it found the meter had been tampered with.

For example, UGI witness Klopp testified that he visited the service address on June 22, 2016 because of a report of usage on an inactive meter. Tr. 60. Mr. Klopp found that the curb valve was on and that gas was passing through to the meter, so he dispatched a technician to shut the curb valve off. Tr. 60-61. On February 7, 2017, Mr. Klopp was called to the service address again by a UGI technician who noticed the meter lying on the floor and a bypass in place. Tr. 61. Mr. Klopp testified that the technician removed the bypass. Tr. 63. Mr. Klopp added that the situation was not safe and that the police and fire department were present. Tr. 63. In support of his testimony, Mr. Klopp sponsored several exhibits of photographs that depict the curb valve turned on outside, the bypass in the basement and the meter on the floor. Tr. 64-67; UGI Exh. Nos. 8.1-8.4. These pictures clearly demonstrate that the meter at the service address has been tampered with. For example, as Mr. Klopp testified:

Q. Now please reference Exhibit 8.3. What does 8.3 show?

A. 8.3 is showing the Gastite pipe bypass. The green box is showing where there's no meter, which is where the meter should be. You can see the head of the service that's coming right from the street, directly into the Gastite pipe.

Tr. 66-67.

In addition, UGI also presented Benjamin Braddock who testified that he was the UGI technician Mr. Klopp referenced who visited the service address on February 7, 2017 and noticed the curb valve in the on position. Tr. 71. Mr. Braddock testified that he was dispatched to the property to investigate a possible theft of service. Tr. 71. Mr. Braddock in fact noticed that the curb valve was broken and made multiple attempts to contact the occupants of the house to gain access to make sure the situation was safe. Tr. 71-72. Mr. Braddock added that it was determined that the police and fire department were needed to gain access. Tr. 72. Mr. Braddock testified:

Q. Well, what is it you deemed it necessary at that time to gain access to the property?

A. When we receive a report that a bypass has been installed, and that the meter has been removed, and given the evidence that I had a broken curb valve, we have no way of determining if the gas was flowing in to the house, so that's a – at that point, we determine we need to get inside to make sure the property is safe.

Tr. 72. Mr. Braddock confirmed Mr. Klopp's testimony that once he entered the service address the bypass was found and the meter was on the floor. Tr.74. Mr. Braddock added that "any time UGI facility has been compromised or tampered, you run the risk of gas leaks. And we have no way of determining the extent of the – as far as the piping and how safe it is." Tr. 74.

In contrast, none of the evidence presented by the complainants refutes the evidence presented by UGI that the meter at the service address had been tampered with and an unsafe condition existed. In fact, much of the evidence submitted by the complainants involves matters that are beyond the Commission's jurisdiction.

For example, during the hearing, Mr. Simmons testified that he rented the property at the service address from Ms. Mowery and that squatters had entered the house and stolen various things. Tr. 9. Mr. Simmons testified that the gas service was on at the house when he first moved in at the end of January 2017. Tr. 9-10. In the beginning of February, however, the gas was terminated so Mr. Simmons contacted UGI. Tr. 10.

Ms. Whisenant testified that she agreed to manage the property on behalf of Ms. Mowery while she was incarcerated. Tr. 25. Ms. Whisenant also testified regarding her various reports to the Harrisburg police department of suspicious activity at the service address since September 2015. Tr. 26-29. Ms. Whisenant also discussed the various efforts she undertook on behalf of Ms. Mowery at the service address. Tr. 30-31. Ms. Whisenant also discussed the various exhibits that she admitted in to the record.

Although these exhibits were admitted as three exhibits, they are in fact each multiple pages long. For example, Whisenant Exhibit Number 1 is a string of emails between

Ms. Whisenant and Captain Gabriel Olivera of the Harrisburg Police Department. Whisenant Exh. No. 1. These emails begin on November 23, 2016 and end on January 16, 2017 and detail Ms. Whisenant's reports of suspicious activity and stolen items from the service address. Whisenant Exhibit Number 2 is Ms. Whisenant's chronology of events regarding Ms. Whisenant's involvement with Ms. Mowery and the service address, including her work in managing the property and leasing the property to Mr. Simmons. This chronology also included Ms. Whisenant's various contacts with the Harrisburg Police Department and the complaint subsequently filed against UGI. Whisenant Exhibit Number 3 is a copy of the complaint filed against UGI which included more than thirty single-spaced, type-written pages again about the suspicious activity and efforts with the Harrisburg police, Ms. Whisenant's role in managing the property and leasing the home to Mr. Simmons and efforts to resolve the outstanding matter with UGI. A close review of these exhibits, however, reveals that none of these arguments are within the Commission's jurisdiction to determine.

It is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n., 43 A.2d 348 (Pa. Super 1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

The suspected illegal activity and response from the Harrisburg police department, for example, are irrelevant to whether UGI has violated the Public Utility Code, a Commission order or regulation or a Commission-approved company tariff. While the complainants may have legitimate claims regarding illegal activity at the service address, those matters are beyond this Commission's jurisdiction. Similarly, Ms. Whisenant's multiple efforts to assist Ms. Mowery while she was incarcerated are commendable but do not weigh upon whether the complaint against UGI should be sustained. The multiple requests for Catholic

immigration services to use the home while otherwise unoccupied is beyond the ability of the Commission to direct. Likewise, UGI's conduct in this proceeding did not violate the Public Utility Code, a Commission order or regulation or a Commission approved tariff of the company in light of the company's finding that an unsafe situation existed because someone tampered with the meter requiring that service be terminated.

It is also noted that Ms. Mowery briefly testified during the hearing. Ms. Mowery testified that she purchased the home in September 2015 and became incarcerated one month later. Tr. 53. She also noted that she did not have the home inspected when she purchased it and surmised that perhaps the bypass existed prior to the purchase of the home. Tr. 53.

Again, none of this testimony supports a finding that UGI has violated the Public Utility Code, a Commission order or regulation or a Commission-approved company tariff. UGI discovered a bypass and that the meter was tampered with, creating an unsafe condition, and UGI acted quickly to make the situation safe. The Commission takes seriously its obligation to ensure public safety. That is why Section 56.98 of the Commission's regulations was created. UGI acted correctly to terminate service immediately upon finding that an unsafe condition existed due to tampering. It does not matter for Commission purposes who caused the unsafe condition by tampering with the meter – only that the unsafe condition existed and UGI acted quickly to correct it.

Finally, the complainants also averred in their complaint that they were not provided notice of termination. Section 56.98, however, only requires that the public utility make a good faith attempt to provide a post-termination notice to the customer or a responsible adult person or occupant after tampering had been discovered. 52 Pa.Code § 56.98(b). If providing a post-termination notice to the customer or responsible person at the affected premises is not possible, the public utility shall conspicuously post the notice at the affected premises. *Id.* In this instance, given the emergency nature of the termination caused by the illegal bypass found at the service address and removal of the meter, it was not possible for UGI to provide advance notice of the termination. UGI again acted consistent with the Commission's regulations. The complainants' argument to the contrary again will be rejected.

As a result, the complainants have failed to satisfy their burden to demonstrate that UGI violated the Public Utility Code, a Commission order or regulation or a Commission-approved company tariff when terminating service to the service address. UGI demonstrated that it properly terminated the service at the service address because it was found that the meter had been tampered with and an unsafe condition existed.

Incorrect Charges

With regard to the complainants' claim that there are incorrect charges on the bill, in the complaint, the complainants averred that they should not be responsible for charges regarding the tampered meter and stolen utilities that occurred as a result of the squatters. The complainants also averred that they should not be charged for UGI's "unwarranted gas and water shut off." During the hearing, the complainants did not present any evidence in support of their claim that there are incorrect charges on the bill, other than the assertion that there were squatters in the service address who should be responsible for their usage and the meter tampering and the vandalism that occurred at the property.

In response, UGI presented the testimony of Bryan Huber, a credit and collections leader for UGI who supervises UGI's revenue protection department theft investigations. Tr. 84. Mr. Huber testified, among other things, regarding his many interactions with Ms. Whisenant about the gas service at the service address. Tr. 86-93. Mr. Huber also sponsored several exhibits. In particular, Mr. Huber sponsored the statement of account for the service address, the county property and tax record for the property, the rental agreement in place at the service address and the power of attorney Ms. Mowery gave Ms. Whisenant to manage the property. UGI Exh. Nos. 1-4.

More importantly, however, Mr. Huber also discussed UGI Exhibits 5, 6, 7 and 9. Tr. 96-104. UGI Exhibit 5 is the March 13, 2017 letter from UGI to Ms. Whisenant and Mr. Simmons indicating that a payment of \$4,573.41 is required in order to restore service at the service address. UGI Exh. No. 5. UGI Exhibit 9 provides the specific line item charges that comprise that \$4,573.41, including consumption charges, labor charges and service restoration

charges. UGI Exh. No. 9. UGI Exhibit Number 7 is the page from the UGI tariff that gives the company the authority to charge the customer after tampering or theft of service has been found. UGI Exh. No. 7. Mr. Huber provided this testimony and sponsored these exhibits in support of the company's position that a payment of \$4,573.41 is required in order to restore service at the service address consistent with UGI's tariff and the Commission's regulations.

Most notably, Section 56.191 of the Commission's regulations pertains to payment and timing of restoration of service. Specifically, Section 56.191(a) allows public utilities to require a reconnection fee based upon the public utility's cost as approved by the Commission prior to reconnection of service following lawful termination of the service, with the approved amount on file with the Commission in the utility's tariff. 52 Pa.Code § 56.191(a). Furthermore, the Commission's regulations allow 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. 52 Pa.Code § 56.191(d).

As a result, UGI has presented ample evidence to support its position that a payment of \$4,573.41 is required in order to restore service at the service address. UGI has demonstrated the specific line item charges that comprise that \$4,573.41, including consumption charges, labor charges and service restoration charges, and identified the specific tariff provision that allows UGI to charge the complainants this amount for service to be restored. Furthermore, doing so is consistent with the Commission's regulations regarding restoration of service. In contrast, the complainants have presented no evidence in support of their position that they should not be responsible for these restoration charges other than their testimony that the squatters should be responsible because they caused the unsafe condition to exist.

As such, the complainants have failed to satisfy their burden that there are incorrect charges on their bill. This portion of their complaint will also be dismissed.

Payment Arrangement

The complainants also requested in their complaint that they be given a payment arrangement. Chapter 14 of the Public Utility Code authorizes the Commission to establish payment arrangements between and public utility and its customers based on the federal poverty level of the household. 66 Pa.C.S. §§ 1405(a) and (b). Federal poverty level is determined by the gross monthly household income and the number of people living at the home. For example, a customer who is at or below 150% of the federal poverty level is entitled to five years to resolve an unpaid balance. 66 Pa.C.S. §§ 1405(b)(1).

There is no record evidence indicating what the correct federal poverty level would be to establish a payment arrangement in this case. Therefore, a payment arrangement will not be established as part of this decision. The parties are encouraged, however, to collaboratively determine whether the outstanding balance owed can be repaid through a payment arrangement.

As such, the complainants' request for a payment arrangement will also be dismissed.

Conclusion

In conclusion, the complaint filed by Mr. Simmons, Ms. Mowery and Ms. Whisenant will be dismissed because the complainants have failed to meet their burden to demonstrate that UGI violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the Company with regard to the service provided. In contrast, UGI has demonstrated that it appropriately terminated service at the service address when it discovered that the meter had been tampered with and an unsafe condition existed. Similarly, UGI has presented substantial evidence demonstrating that it correctly determined the restoration fee the complainants are required to pay in order for service to be restored at the service address. Both of these actions were consistent with the Commission's regulations. The complainants have raised several issues regarding matters that are beyond the scope of the Commission's

jurisdiction. The fact that this decision dismisses the complaint does not impact the merits of those extra-judicial issues and the parties are free to pursue those issues in a court of competent jurisdiction to the extent they feel necessary. This Commission, however, cannot address those issues.

CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a

complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Superior 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa.Cmwlth 23, 480 A.2d 382 (1984).

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

10. It is well settled that the Commission may not exceed its jurisdiction and must act within it. City of Pittsburgh v. Pa. Pub. Util. Comm'n, 43 A.2d 348 (Pa. Super 1945).

11. Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 235 A.2d 602 (Pa. 1967).

12. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. Hughes v. Pa. State Police, 619 A.2d 390 (Pa. Cmwlth 1992).

13. As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility Code. 66 Pa.C.S. §§ 101, *et seq.*

14. The Commission's jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell, 383 A.2d 791 (Pa. 1977).

15. The Commission's regulations only require that the public utility make a good faith attempt to provide a post-termination notice to the customer or a responsible adult person or occupant at the affected premises and that if providing a post-termination notice to the customer or responsible person at the affected premises is not possible, the public utility shall conspicuously post the notice at the affected premises. 52 Pa.Code § 56.98(b).

16. The Commission's regulations allow public utilities to require a reconnection fee based upon the public utility's cost as approved by the Commission prior to reconnection of service following lawful termination of the service, with the approved amount on file with the Commission in the utility's tariff. 52 Pa.Code § 56.191(a).

17. The Commission's regulations allow 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. 52 Pa.Code § 56.191(d).

18. Chapter 14 of the Public Utility Code authorizes the Commission to establish payment arrangements between and public utility and its customers based on the federal poverty level of the household. 66 Pa.C.S. §§ 1405(a) and (b).

19. Mr. Simmons, Ms. Mowery and Ms. Whisenant have failed to satisfy their burden to demonstrate that UGI has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided at the service address.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the caption of this proceeding will be amended to include Yvonne Whisenant and Ashley Mowery as complainants.
2. That the formal complaint filed by Akeem Simmons, Ashley Mowery and Yvonne Whisenant against UGI Utilities, Inc. on May 10, 2017 at Docket Number C-2017-2605783 is hereby denied.
3. That this matter be marked closed.

Date: January 22, 2018

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge