

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tammy McMichael	:	
	:	
v.	:	F-2017-2608436
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Complainant’s Complaint in part and denies it in part. The Complaint is granted in that the Complainant is not responsible for the portion of the balance that accumulated at the service address between May 10, 2012, and June 24, 2013. The Complaint is denied in that the Complainant is responsible for the balance that accumulated at the service address between June 25, 2013, and August 15, 2014. The Complaint is also denied as it relates to the Complainant’s claims that PGW improperly issued her a termination notice.

**HISTORY OF THE PROCEEDING**

On June 7, 2017, Tammy McMichael (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service” and “[i]ncorrect charges are on my bill.” Under the “requested relief” section the Complainant alleged that

PGW is improperly holding her responsible for a bill that was not in her name. Complainant has requested to be held responsible only for the bill that accumulated when service was in her name.

On June 29, 2017, Respondent filed an Answer admitting that it issued a shut off notice for the service at 2206 W. Cheltenham Avenue, Philadelphia, PA (service address). PGW denied that there are incorrect charges on the bill for service at the service address.

By Hearing Notice dated August 18, 2017, a hearing was scheduled for October 17, 2017, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 22, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and 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 Complainant subsequently requested that the hearing be converted from in-person to telephonic. I granted the Complainant's request by order dated September 12, 2017.

By Hearing Type Change Notice, the October 17, 2017, in-person hearing was changed to an Initial Call-In Telephonic Hearing.

The hearing convened as scheduled on October 17, 2017. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jennifer Pearson, a Customer Review Officer. Respondent offered five exhibits which were all admitted into the record.

The record in this case consists of a 62-page transcript and five exhibits. The record closed on November 15, 2017, when I received the transcript of the October 17, 2017, hearing.

## FINDINGS OF FACT

1. The Complainant in this case is Tammy McMichael.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. Complainant resides at 2206 West Cheltenham Avenue, Philadelphia, PA (service address). Tr. 7.
4. Prior to moving to the service address, Complainant resided at, and had an account for gas service with PGW, at 6120 Hasbrook Avenue, Philadelphia, PA. Tr. 16-17, 25; PGW Exh. 1.
5. Complainant's account for gas service at the 6120 Hasbrook Avenue address was from July 14, 2008 until April 10, 2012. Tr. 30-31; PGW Exh. 1.
6. On an unspecified date, the Complainant had to vacate the 6120 Hasbrook Avenue address because of a gas leak that the owners refused to repair. Tr. 9.
7. When the Complainant moved out of the Hasbrook Avenue address, she left an unpaid balance of \$1,741.04. PGW Exhs. 2 & 3.
8. On an unspecified date, the Complainant moved to the service address along with five of her children. Tr. 8, 24-25.
9. Kerry Cooper was residing at the service address when the Complainant moved in. Tr. 9.
10. Mr. Cooper is the Complainant's 8-year-old daughter's father. Tr. 10, 23.

11. Mr. Cooper was the PGW customer of record for the service address from May 10, 2012 until August 15, 2014. Tr. 31; PGW Exh. 1.

12. On June 25, 2013, the Complainant called PGW to request gas service in her name at the service address. Tr. 36; PGW Exh. 2.

13. A PGW representative informed the Complainant during the June 25, 2013 call what information she would need to provide to establish service in her name at the service address, and also informed her that she would be responsible for any unpaid balance if she resided at the service address when the balance accrued. Tr. 36; PGW Exh. 2.

14. The Complainant disconnected from the June 25, 2013 call. Tr. 36; PGW Exh. 2.

15. On April 25, 2014, Complainant and Mr. Cooper went to the Germantown District Office to apply for service in Complainant's name at the service address. Tr. 37; PGW Exh. 2.

16. During this meeting, a PGW worker informed the Complainant of the information she would need to present to complete her application for service, and also informed her that she would need to assume responsibility for any unpaid balance if she resided at the service address when the balance accumulated. Tr. 9, 37-38; PGW Exh. 2.

17. On August 20, 2014, PGW activated service in the Complainant's name. Tr. 38-39; PGW Exhs. 1, 2 & 3.

18. When PGW started the account for service at the service address in the Complainant's name on August 20, 2014, it reactivated her \$1,741.04 unpaid balance from the Hasbrook Avenue address and transferred the \$3,809.55 unpaid balance from Mr. Cooper's account to the Complainant's account. Tr. 33, 40-43; PGW Exhs. 1, 2 & 3.

19. The \$3,809.55 balance transferred from Mr. Cooper's account to the Complainant's account represents the balance that accumulated in Mr. Cooper's account between May 10, 2012 and August 15, 2014. Tr. 40-41; PGW Exh. 1.

20. Complainant has been the customer of record for the service address since August 2014. Tr. 32; PGW Exh. 1.

21. Complainant has supplied Medical Certifications to PGW to avoid termination of service on three occasions: March 29, 2014, April 29, 2014, and June 2, 2014. Tr. 25, 50-51; PGW Exh. 2.

### DISCUSSION

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

To establish a sufficient case and satisfy the burden of proof, 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.Cmwlt. 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.Cmwlt. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlt. 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 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).

In the present case, the incorrect charges the Complainant is challenging are the charges that accumulated under the account of Kerry Cooper at the service address between May 10, 2012 and August 15, 2014. The Complainant has challenged PGW's decision to charge her for the balance that accumulated on Mr. Cooper's account at the service address, maintaining that she did not reside at the service address during the period for which PGW is holding her responsible. PGW maintained that the Complainant resided at the service address during this period and, as such, is responsible for the unpaid balance that accumulated between May 10, 2012 and August 15, 2014.

Regarding the payment of outstanding balances, Commission regulations provide the following:

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.

52 Pa.Code § 56.35(b)(1). Commission regulations define “applicant,” in pertinent part, as “[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.

The Complainant testified that she only resided at the service address for two or three months prior to establishing service in her name in August 2014, and as such, should not be held responsible for the balance that accumulated in Kerry Cooper’s account. However, the Complainant was not able to offer anything other than her testimony to demonstrate that she did not reside at the service address at any time during the period for which PGW is holding her responsible. No matter how honest and strong the Complainant’s assertions are, they cannot form a basis for a finding of fact in her favor. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000) (citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987)).

Although the Complainant testified that she only resided at the service address for two or three months prior to obtaining service in her name on August 20, 2014, PGW’s records show that she supplied a medical certificate to halt termination of service at the service address as early as March 29, 2014, nearly five months prior to the date service was placed in her name. PGW’s records further show that the Complainant contacted PGW on June 25, 2013 to inquire about obtaining service in her name at the service address. Tr. 12, 51, 36; PGW Exh. 2. While I cannot conclude, based upon the information in the record, that the Complainant resided at the service address for the entire time PGW seeks to hold her responsible,<sup>1</sup> I can conclude that she was residing at the service address as of June 25, 2013 since she inquired about placing service in her name on that date. Accordingly, regarding this issue, the Complainant’s Complaint will be granted in part and denied in part. The Complainant’s Complaint is granted in that she is not responsible for the portion of Mr. Cooper’s balance that

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<sup>1</sup> I would note that PGW asserted that the Complainant was residing at the service address for the entire period based on a January 24, 2013 entry on PGW Exh. 2 where it indicates that there were seven people residing at the service address. Tr. 53. Although the Complainant did live at the service address at some point with five of her children and Mr. Cooper, I cannot conclude to any degree of certainty based on the similarity of household sizes that the Complainant was one of the two adults residing at the service address on January 24, 2013.

accumulated between May 2012 and June 24, 2013. It is denied in that the Complainant is responsible for the balance that accrued at the service address between June 25, 2013 and August 15, 2014.

The Complainant also indicated in her Complaint and at the hearing that PGW issued her a termination notice. Although the Complainant did not present a termination notice for my consideration, she testified that the notice she received only informed her that her service would be terminated because her bill was high. The Complainant further testified that this notice did not provide her with any explanation of the steps she could follow to avoid termination. The Complainant did not offer any additional testimony regarding PGW's termination notice. Based on the limited testimony provided by the Complainant, and the fact that she did not supply a copy of this notice for my consideration, the Complainant did not meet her burden of demonstrating that PGW improperly issued her a termination notice, or that the contents of the notice issued failed to meet the notice requirements set out in 52 Pa.Code § 56.91.

#### CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S.A. § 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. 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. 52 Pa.Code § 56.35(b)(1).

5. Commission regulations define “applicant” as 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.

6. Complainant sustained her burden of proving that Respondent incorrectly held her responsible for the balance that accumulated at the service address between May 10, 2012 and June 24, 2013.

7. Complainant failed to sustain her burden of proving that Respondent incorrectly held her responsible for the balance that accumulated at the service address between June 25, 2013 and August 15, 2014.

8. Complainant failed to sustain her burden of establishing that the Respondent improperly issued her a service termination notice and also failed to demonstrate that Respondent’s termination notice did not adhere to the regulations regarding the contents of termination notices at 52 Pa.Code § 56.91.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Tammy McMichael against Philadelphia Gas Works at Docket No. F-2017-2608436 is granted in part and denied in part;

2. That the Complaint is granted in that the Complainant is not responsible for the portion of the balance that accumulated at the service address between May 10, 2012 and June 24, 2013;

3. That the Complaint is denied in that the Complainant is responsible for the balance that accumulated at the service address between June 25, 2013 and August 15, 2014;

4. That the Complaint is denied as it relates to the Complainant's claims that Philadelphia Gas Works improperly issued her a termination notice; and

5. That the record at Docket No. F-2017-2608436 be marked closed.

Date: February 6, 2018

\_\_\_\_\_/s/\_\_\_\_\_  
Christopher P. Pell  
Deputy Chief Administrative Law Judge