

Plaintiff In Error
Kenneth McLean
1509 W. 65th Ave
Philadelphia PA 19126

Date: 02/09/2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Kenneth McLean v. PGW. Docket No. C-2016-2539492

Dear Secretary Chiavetta:

Pursuant to Section 332(h) of the Public Utility Code, Pa. C.S. § 332 (h), the Plaintiff ("Kenneth McLean") hereby files a Reply to the defendant's (defendant in error-Philadelphia Gas Works), Answer to the plaintiff's Notice of Appeal/Petition for Rescission received by your office January 29, 2018.

Your attention to this submission is appreciated.

Sincerely

Kenneth McLean

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC
SECRETARY'S BUREAU
Kenneth McLean

Plaintiff in error

v.

Philadelphia Gas Works
Defendant in error

Docket No. c-2016-2539492

Plaintiff's Reply to the defendant's (PGW's) Answer to the plaintiff's
"Notice of Appeal" as deemed Petition for rescission

Pursuant to Public Utility Code Pa. C.S. § 332(h), the plaintiff hereby files a Replication to the defendant's Answer to the plaintiff's "Notice of Appeal". The "Notice of Appeal", is submitted in accordance with conditions involving "NUNC PRO TUNC" (If the time for entering an Appeal has expired, a party may seek leave to file a notice of appeal "out of time" or upon a lapse of time), if permitted, the notice is filed NUNC PRO TUNC and thus render this appeal timely.

In timely reply to the defendant's Answer, Kenneth McLean (Plaintiff), hereby avers the following argument:

1. The opinion & statement provided by "Vice Chairman Andrew G. Place", dated October 26, 2017. Provided a trenchant & lucid account regarding his experience derived from reviewing the transcript process obtained from this Commission's assay conducted on June 15, 2016, before Administrative Law Judge "Mary D. Long" by Telephonic Hearing. This account per se indicated "The transcript reflects several instances where the Complainant was simply inaudible", [2nd paragraph, line 12-13] & "He could not be heard by the Administrative Law Judge and the Court reporter", [2nd paragraph, line 8-9]. The plaintiff did not receive notice informing him of the malfunction. Inspection of the transcript documents is not made available by official notice containing specific notes of inform-

ation used to impart or make known how, when & where the opportunity to inspect transcript documents is established & available. Subsequently such notice is not accessible to be conformed to and adopted. Whereas a malfunction occurred an Arrest Of Judgement ought to ensue but the commission failed to launch the withholding of JUDGEMENT. And whereas notice to the party litigants informing them of the audio malfunction is omitted or not delivered by the Commission and the opportunity to inspect the transcript documents is not imparted by official notice. The plaintiff is without leverage to effect concern pertaining to an audio malfunction or the mutilated transcript. Wherefore the plaintiff's position citing a malfunction is effected under the condition of ARGUENDO & whereupon Vice Chairman, Andrew G. Place's opinion is not contradicted (Nemine Contradicente), as Error Apparent conditions prevailed.

2. PGW failed to establish a General Issue that can be used for imposing Negative Evidence (testimony that an alleged fact did not exist). Denial by the defendant of every material allegation of fact in the plaintiff's Complaint constitute a "GENERAL ISSUE". The defendant's assertion entered within the Answer on page three (3), represent a Mistake In Law as misalleged by misrepresentation and is not provided according to the allegations contained in the pleadings (SECUNDUM ALLEGATA). And is not provided in accordance with what has been alleged and proved (SECUNDUM ALLEGATA ET PROBATA) under Misrecital conditions. The Complainant testified & laid claim to the fact of being nomad. This claim is more than a Scintilla of Evidence as meeting the standard of Satisfactory Evidence (Evidence or proof that ordinarily satisfies an unprejudiced mind), as provided under oath in the nature of solemnity. And deemed Satisfactory in testimony by Administrative Law Judge "Mary D. Long". This claim entered by plaintiff's testimony is theorem based upon the organon ("no official records of where the Complainant lived during the period when he was nomad are available whereupon such records cannot be established by manifestation"). And the fact that such records cannot be authorized, recognized & approved because these records are nonentity rendered the defendant's Answer, Pleadings or Exceptions Scandalous Matter or a Sham Pleading.

3. The defendant invoked an unoriginal or stale Credit report with intent to associate the Complainant with the indebted property owners whom had an outstanding balance. The Credit report collected dated back to year "1986" more than 26 years from the current year posted. Any credit

report invoked and collected and dating back ten years or more from the current year posted is faithless and declared ineligible & incapacitated by the FAIR CREDIT REPORTING ACT. The Complainant cannot vouch for the accuracy of an obsolete recording.

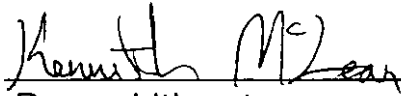
CONCLUSION

PGW failed to establish a GENERAL ISSUE and Negative Evidence necessary to refute the complainant's claim of nomad status. An obsolete credit report is unqualified as null and void. The revocation of the Administrative Law Judge's decision dated September 12, 2016, is improper conduct whereupon the Commission's ability to establish an ASSIGNMENT OF ERROR pertaining to ALJ's performance involving Judicial discretion, Legal discretion or the Ministerial act is unqualified.

Wherefore plaintiff hereby request the Commission to reinstate the Order dated September 12, 2016, pursuant to Section 332(h) of the Public Utility Code Pa. c.s. § 332(h).

This replication is made and submitted subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Respectfully Submitted by
Kenneth McLean


Pro se Litigant

Date:02/09/2018

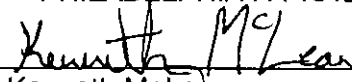
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CERTIFICATE OF SERVICE

I Kenneth McLean, certify under penalty of perjury that the forgoing REPLICATION dated February 09 ,2018, is forwarded by first class mail to the following:

LAURETO FARINAS ESQUIRE
PHILADELPHIA GAS WORKS
4th Floor
800 W MONTGOMERY AVENUE
PHILADELPHIA PA 19122

Date: 02/09/2018


Kenneth McLean

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transcript appearing without "proper register and charter." Further the Petition fails to state which parts of the transcript are materially lacking due to the alleged malfunction of the equipment used to record and/or transcribe the hearing.

2. Denied. The Petition fails to state which parts of the transcript are materially lacking due to any alleged malfunction of the equipment used to transmit or record the hearing.

3. Denied. PGW has no knowledge of any requirement of notice delivered for any malfunction of equipment resulting in a failure to adequately transcribe the hearing. Further, the Petition fails to state the parts of the transcript that are defective for those reasons.

4. Denied. The transcript is made available for inspection at the Commission offices. Its availability is made known to anyone who reviews the Commission's electronic docket information. Further, the transcript is available for purchase from the court reporting service. By way of further answer, the Complainant filed a Reply to PGW's Exceptions and failed to raise any issue regarding the adequacy of the transcript.

5. Denied. The Petition fails to identify specific areas from the transcript that are missing or incorrect which render it inadequate. To the contrary, to PGW's knowledge, the transcript as filed with the Commission represents an accurate transcribing of the hearing that occurred on June 15, 2016.

6. Denied. Paragraph 6 of the Petition restates a conclusion that due to the inadequacy of the transcript, the Commission's Order and Opinion is against the Complainant's interest. This paragraph fails to state with any specificity how this state has occurred.

7. Denied. Pursuant to 52 Pa. Code §56.35(b)(2) utilities are permitted to consult credit report for information on place of residence.

8. Denied. The record of the proceeding is clear, the Complainant failed to demonstrate that he lived somewhere other than the Service Address. Although the Complainant's testimony was that he was homeless and stayed with various friends, he could not state the names of the people that he stayed with while homeless.² The

² Transcript, p. 34 - 36

Complainant fails to support his assertion that he was homeless by providing any information about the various friends that he stayed with on a temporary basis or the names of shelters that he might have stayed in for that period. He simply denies that he was at the Service Address.

The purpose of allowing the credit report as permitted by 52 Pa. Code §56.35(b)(2) is to establish the possible residence of a person associated with utility usage. The Order and Opinion recognized that with the Complainant's failure to support his assertion that he stayed with various friends and places other than the Service Address. Without supporting evidence that the Complainant was homeless, PGW's evidence as contained in the credit report is un-rebutted. 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.

9. Denied. The Petition misapplies the shifting burdens of proof and persuasion and ignores the Complainant's failure to substantiate his period without a permanent address. As the Complainant in this proceeding, he must carry the burden of proof. The Complainant testifies that he was homeless and stayed with various friends. PGW asserts that the credit report shows the Complainant's address. The Complainant attempts to rebut that fact by stating that he had been homeless for the period but is unable to support his assertion that he was homeless with any reasonable evidence of where he stayed other than the Service Address. He simply maintains that he was a nomad. Thus, the Complainant has failed to rebut PGW's evidence of his residence. 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. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980). The Complaint failed to meet his burden in this matter. The Petition fails to raise any plausible new or novel arguments that the transcript was defective resulting in the finding that he failed to meet his burden of proof in this matter.

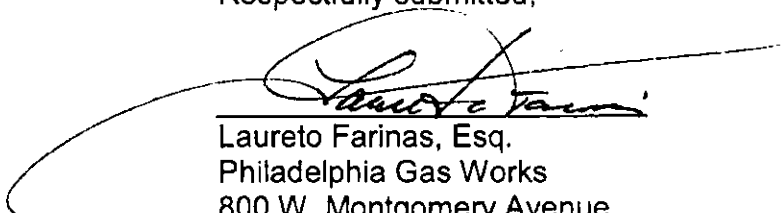
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WHEREFORE, PGW respectfully requests that the Commission deny the Petition. The Petitioner has failed to show sufficient grounds upon which the Commission may rescind its decision pursuant to 52 Pa. Code § 5.572. The Commission should not rescind and set aside the Order and Opinion entered on November 13, 2017 in the above captioned matter.

Respectfully submitted,

February 7, 2018



Laureto Farinas
Laureto Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

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Complainant
Kenneth McLean
1509 W. 65th Ave.
Philadelphia PA. 19126

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Date:01/26/2018

Secretary & Office of Special Assistants
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
Attn: Gladys M. Brown, Chairman, Andrew G. Place, Vice Chairman,
& Commissioners enbank
Kenneth McLean v. Philadelphia Gas Works C-2016-2539492

Notice of Appeal to be filed in order of NUNC PRO TUNC.

Hereby appeal complainant is seeking to nullify the Commission's review determination Order entered by the Commission November 13, 2017 & adopted October 26, 2017, Pursuant to Section 332(h) of the Public Utility Code, Pa. C.S. § 332(h).

This appeal is submitted for the following reasons:

1. The reviewing judicial examiner relied on a executory Transcript whereupon the transcriber failed to register testation or evidence (Testatum), in accordance with a proper register & charter. Or whereupon the testimony issued is not registered within a solemn note due to a malfunction in the Commission's AUDIO Phone apparatus used to administer the assemblage of testimony conducted for this commission's Assay.
2. Complainant's testimony is mutilated resulting from the audio equipment malfunction and whereupon the recorded sound or transcript is not audible or capable of being heard or construed by omission.
3. Fair notice is not delivered and executed to the attention of the complainant which could be used to inform the complainant of a technical malfunction within the transcription process denying the plaintiff the opportunity to exercise a Caveat.

4. Opportunity to Inspect the transcript (Inspection Of Documents), is not launched through an available or open process.
5. Based upon the circumstance or existing condition (state of affairs surrounding and affecting the Commission's transcript process & procedure), or malfunction. The order entered November 13, 2017, is an OVERREACH as failing to circumstantiate, and represent a Non-Sequitur or implausible or incoherent act.
6. The order entered November 13, 2017, is indeed entered Against the Will of the Complainant or plaintiff's legal right to function as counselor (Pro se litigant), under Adequate representation. Denying the interest of complainant to be sufficiently protected. And entered Against the weight of the evidence as contrary to credible evidence. And whereupon this Order is not sufficiently supported by the evidence representing Adverse interest, (over-issue), or pseudo condition. And represent unreasonable, unconsciousable or arbitrary action executed without proper consideration of facts and law pertaining to the issue submitted.
7. The credit report focusing on an epoch pertaining to the year 1986, is unsupported by the Fair Credit Reporting Agency rule indicating that all credit Report Accounts are limited to data accessibility extending ten years back from any search date executed by "Experian" credit report.
8. The Commission's comment indicating " Complainant was unable to provide addresses where he lived and full names of any individuals with whom he lived during the period of time in question " is representing ADHOMINEM condition or Wrongful act, (page 11 of the Order). No official record is established to confirm that the complainant told PGW that he was living at the service address during any specific time frame or period. And the plaintiff testified under oath and averred that "he did not inform PGW representatives that he lived at the service address from year 2009-2014".
9. The fact indicating that the complainant was nomad is not refuted by PGW, therefore such testimony issued asserting that complainant was nomad is not subject to probative condition. Wherefore providing the

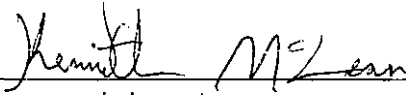
Commission material to support addresses or full names of people & location where he lived during the period of being nomad is unnecessary and incapacitated or obviated. Providing the commission with impertinent content is not a procedure or method of proceeding by which a legal right is enforced.

The above nine statements provide cogent authority and ordinary prudence for allowing this commission to adopt the appeal put forth herein by the Complainant.

Wherefore the complainant request this Commission to revoke & disaffirm the Order entered November 13 2017, and reinstate the Order entered September 29, 2016, signed and dated September 12, 2016, by Administrative Law Judge, Mary D. Long.

Respectfully Submitted by
Kenneth McLean

Date: 01/26/2018


complainant

estab. - testified as testimony or evidence
Admin. conditions vs.

Vanguard
Orthodox
in capacity

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105**

Public Meeting held October 26, 2017

Commissioners Present:

Gladys M. Brown, Chairman, dissenting
Andrew G. Place, Vice Chairman, Statement, dissenting in part
David W. Sweet
John F. Coleman, Jr.

Kenneth McLean

C-2016-2539492

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Philadelphia Gas Works (PGW), filed on October 19, 2016, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Mary D. Long, issued on September 29, 2016. On November 1, 2016, Kenneth McLean (Mr. McLean or Complainant) filed his Reply Exception.¹ For the reasons stated below,

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¹ While the Reply Exception was filed a day after the deadline set forth in 52 Pa. Code § 5.535(a), we will consider the Reply Exception in order to secure a just, speedy, and inexpensive determination in this proceeding, consistent with 52 Pa. Code § 1.2(a).

we shall grant the Exceptions and reverse the ALJ's Initial Decision, in part, consistent with this Opinion and Order.

History of the Proceeding

On March 29, 2016, Mr. McLean filed a Formal Complaint with the Commission challenging his responsibility for payment of an outstanding balance from a previous natural gas account that was originally opened in the name of his father, Thomas McLean. The Complainant alleged that although he was born and grew up at the service address, he never lived or stayed at the property from 2011 until he moved in around December 2014.² I.D. at 2, Tr. at 33, 35-36. The Complainant also averred that from 2012 to December 2014 he did not have a permanent address and was homeless. I.D. at 3; Tr. at 18, 34. As such, the Complainant argued that PGW improperly transferred a balance of \$1,541.49, which accrued at the service address from January 18, 2012, until February 23, 2015, to his name.

On May 2, 2016, PGW filed an Answer denying that there were incorrect charges on the Complainant's bill. PGW argued that the Complainant resided at the service address during the time when the disputed balance accrued based on a consumer credit report which does not indicate any other address for the Complainant since 1986. I.D. at 3; Tr. at 71, 83-84. Additionally, PGW argued that its customer contact records include a notation whereby the Complainant himself "confirmed he has always lived at the property." PGW Ex. 1 at 5. As such, PGW requested that the instant Complaint be dismissed.

² The Complainant inherited the service address from Evelyn McLean, who died in 2014. I.D. at 3, Tr. at 9, 14.

On June 15, 2016, the ALJ conducted a telephonic hearing in this matter. The Complainant appeared *pro se* and testified on his own behalf. PGW was represented by counsel. PGW presented the testimony of one witness, Adrian Crawford, and presented five exhibits which were admitted into the record. The record consists of PGW's Exhibits Nos. 1-4 and 6, as well as a 108-page transcript. The record was closed on July 25, 2016.

On September 29, 2016, the Commission issued ALJ Long's Initial Decision, which recommended that the Complaint be partially sustained as PGW did not properly transfer the balance of the former ratepayer at the service address, which accrued from January 18, 2012, to December 2014, to the Complainant. I.D. at 7. However, because the Complainant admitted that he moved into the service address around December 2014, the ALJ found that the Complainant was responsible for any charges which accrued from December 1, 2014, until the time the Complainant contacted PGW to have service placed in his name on February 20, 2015. I.D. at 7-8.

As previously noted, PGW filed Exceptions to the Initial Decision on October 19, 2016, and the Complainant filed his Reply Exception on November 1, 2016.

Discussion

A. Legal Standards

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). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that PGW is responsible or accountable for the

problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PGW. *Selling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. 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. PUC*, 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 (burden of persuasion) to rebut the evidence of the Complainant shifts to PGW. If the evidence presented by PGW is of co-equal weight, the Complainant has not satisfied his/her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of PGW. *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).

Any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not

required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

A public utility is entitled to full payment for service provided to customers and all customers are obligated to pay for the utility service provided to them. Otherwise, a customer's unpaid bills are included in the utility's uncollectible expenses and ultimately paid for by other utility customers. *Scaccia v. West Penn Power Co.*, 55 Pa. P.U.C. 637 (1982); *Mill v. Pa. Public Utility Comm'n*, 447 A.2d 1100 (1982); *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Order entered April 8, 1988).

When a person applies to have utility service in their name, Section 56.35 of the Commission's Regulations provides that a utility can require a person to pay an outstanding account balance if they resided at the service address when the account was in the name of another person as follows:

(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.

(3) Any outstanding residential account with the public utility may be amortized in accordance with § 56.191 (relating to payment and timing).

(c) This section does not affect the creditor rights and remedies of a public utility otherwise permitted by law.

52 Pa. Code § 56.35.

B. ALJ's Initial Decision

In this proceeding, the ALJ made eighteen Findings of Fact and reached five Conclusions of Law. I.D. at 2-4, 8. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are

either expressly or by necessary implication rejected or modified by this Opinion and Order.

ALJ Long partially sustained the Complaint in this matter because PGW's reliance on a credit report, which only established the Complainant's last known address in 1986, was insufficient on its own to demonstrate that the Complainant resided at the service address during the time when the disputed balance accrued from 2012 to December 2014. I.D. at 6. The ALJ noted the following:

PGW relies solely on a customer contact record which indicates the result of a credit report stating that the Complainant's last known address was the service address in 1986. Since the Complainant cannot demonstrate that he lived anywhere else, PGW concludes that he resided at the service address and is responsible for the outstanding balance. The Complainant admits that he lived at the service address in 1986. It is the home in which he grew up, and during that period of time he was attending college. However, he also testified credibly that during 2012 until he returned to the property after he inherited the home [in December 2014], he did not live there but was homeless.

I.D. at 6.

The ALJ specifically noted that Section 56.35(b)(2) of our Regulations places the burden of proving that a person resided at a service address on the *utility* by requiring the *utility* to establish residency using certain documents, including a commercially available consumer credit report. I.D. at 6. The ALJ found that PGW's reliance on a credit report, which only established the Complainant's last known address in 1986, was insufficient to establish the Complainant's residence at the service address from 2012 to December 2014. *Id.* Additionally, the ALJ found that PGW's argument that the *Complainant* himself could not demonstrate that he lived anywhere other than the

service address was not consistent with the requirement for the *utility* to establish residency at the service address, as set forth in Section 56.35(b)(2). *Id.* Therefore, the ALJ found that the Complainant's testimony that he was homeless from 2012 to December 2014 was credible and that PGW presented no reliable evidence to dispute the Complainant's testimony. *Id.*

The ALJ also found that PGW's reliance on a notation in its customer contact records, whereby the Complainant allegedly "confirmed he has always lived at the property," was insufficient to demonstrate that the Complainant resided at the service address from 2012 to December 2014. *I.D.* at 7. The ALJ noted that the Complainant credibly testified that he did not tell the PGW customer service representative that he had always lived at the property when he called to establish service. *Id.* The ALJ also noted that PGW did not present the customer service representative who spoke to the Complainant as a witness to dispute the statement. *Id.* Accordingly, the ALJ found that this statement was hearsay. *Id.* The ALJ did not find that it was appropriate to apply a recognized exception to the hearsay rule in this situation because there was no corroborating evidence in the form of testimony from the PGW customer service representative who made the notation; nor was there any other evidence to support the statement.³ *Id.* As such, the ALJ found that this statement was insufficient to rebut the Complainant's credible testimony that he was homeless from 2012 until December 2014. *Id.*

³ The ALJ noted that admissions against interest made by a party have long been held to be admissible in civil proceedings as a recognized exception to the hearsay rule. *C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, Docket No. C-00924416 (Order entered June 4, 1993) (*citing, Geiger v. Schneyer*, 157 A.2d 56 (Pa. 1959); *Gougher v. Hansler*, 130 A.2d 150 (Pa. 1957); *Unemployment Compensation Board of Review v. Houp*, 340 A.2d 588 (Pa. Cmwlth. 1975)). The ALJ also noted, however, that it is only appropriate to apply this exception to the hearsay rule when there is sufficient corroborating evidence or other indicia to support the reliability of the statement. *London v. Viridian Energy PA, LLC*, Docket C-2011-2244309 (Final Order March 29, 2012).

Based on the foregoing, the ALJ partially sustained the Complaint to find that: (1) PGW did not properly transfer the balance of the former ratepayer at the service address, which accrued from January 18, 2012, to December 1, 2014, to the Complainant as the Complainant did not reside at the service address during that period of time; and (2) the Complainant is only responsible for any charges which accrued from December 1, 2014, when he moved into the service address, until the time the Complainant contacted PGW to have service placed in his name on February 20, 2015.

C. Exceptions and Replies

In its first Exception, PGW argues that the ALJ erred in finding that the Complainant carried his burden of proof to demonstrate that he was homeless from 2012 to December 2014, and that the Complainant should therefore be responsible for the gas usage at the service address during the time when the disputed balance accrued. Exc. at 1. PGW argues that the evidence of record shows that the Complainant failed to substantiate any aspect of being without a permanent address. *Id.* Specifically, PGW avers that the Complainant was not able to provide, when asked during cross examination, names or addresses of places he stayed on a temporary basis during the time the disputed balance accrued. *Id.* Rather, PGW states that the Complainant was only able to make vague references to staying with friends. *Id.* As such, PGW argues that the Complainant failed to support his assertion that he was homeless with any reasonable evidence of where he stayed during the time the disputed balance accrued at the service address. Exc. at 3-4.

In his Reply Exception, the Complainant states that the ALJ correctly found that his testimony affirming that he was homeless from 2012 to December 2014, was credible. R. Exc. at 2-3. The Complainant further avers that PGW failed to present any reliable evidence to dispute the Complainant's testimony. *Id.*

In its second Exception, PGW argues that the ALJ's failure to recognize PGW's reliance on a credit report, which established the Complainant's last known address since 1986 as the service address, is inconsistent with 52 Pa. Code § 56.35(b)(2). Exc. at 4. PGW states that the purpose of using a credit report to establish residency, as permitted by Section 56.35(b)(2) of our Regulations, is to establish the possible residence of a person associated with utility usage. *Id.* PGW argues that the ALJ's decision to rely solely on the testimony of the Complainant, establishing that he was homeless from 2012 to December 2014, thwarts the purpose of Section 56.35(b)(2) and allows a mere unsubstantiated assertion that the Complainant did not reside at the service address to outweigh the document evidence of record. *Id.*

In reply, the Complainant simply avers that the ALJ was correct in finding that 52 Pa. Code § 56.35 does not place a burden on an applicant to prove that he did not reside at the service address. R. Exc. at 2-3.

D. Disposition

Based upon our review, we find that the Complainant failed to satisfy his burden of proof to demonstrate that PGW improperly transferred the outstanding balance, which accrued at the service address from 2012 to December 2014, to his name. While a utility must ensure that its action of requiring payment of an outstanding residential account is justified under 52 Pa. Code § 56.35(b)(2), once the utility has assigned the arrearage to a customer or potential customer, and that customer wishes to contest the assignment in a formal complaint before the Commission, the Complainant has the burden of proving that the utility acted in violation of a statute, regulation, or order that the Commission has responsibility for administering.⁴ Therefore, the Complainant had

⁴ 66 Pa. C.S. § 332(a).

credibly carried its burden of persuasion, which shifted the burden back to the Complainant to rebut. As no further evidence was admitted by the Complainant in this matter, we find that the Complainant failed to carry this burden, and in doing so, failed to carry his burden of proof. Accordingly, we will grant PGW's second Exception and deny the Complainant's Reply Exception regarding this issue.

in what
basis is it
being denied

Based on the foregoing, we shall reverse the ALJ's Initial Decision to the extent it determined that PGW did not properly transfer the balance of the former ratepayer at the service address, which accrued from January 18, 2012, to December 1, 2014, to the Complainant. We shall, however, adopt the ALJ's Initial Decision to the extent it found that the Complainant is responsible for any charges which accrued from December 1, 2014, when he moved into the service address, until the time the Complainant contacted PGW to have service placed in his name on February 20, 2015. Thus, we conclude that the Complainant is responsible for the payment of the former ratepayer's balance from January 18, 2012, to December 1, 2014, as well as for the more recent charges that accrued from December 1, 2014, to February 20, 2015. Accordingly, the Complaint is dismissed in its entirety.

Conclusion

Based upon our review of the Exceptions, Reply Exception, the Initial Decision, and the record in this proceeding, we shall grant PGW's Exceptions and reverse the ALJ's Initial Decision, in part, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of Philadelphia Gas Works filed on October 19, 2016, to the Initial Decision of Administrative Law Judge Mary D. Long issued on September 29, 2016, are granted, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Mary D. Long is reversed, in part, consistent with this Opinion and Order.
3. That the Formal Complaint filed by Kenneth McLean against Philadelphia Gas Works at Docket No. C-2016-2539492 is dismissed, consistent with this Opinion and Order.
4. That the proceeding docketed at C-2016-2539492 is marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 26, 2017

ORDER ENTERED: November 13, 2017

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105

Kenneth McLean
v.
Philadelphia Gas Works

Public Meeting: October 26, 2017
2539492-OSA
Docket No. C-2016-2539492

STATEMENT OF VICE CHAIRMAN ANDREW G. PLACE

Before the Commission today are the Exceptions of Philadelphia Gas Works (PGW) to the Initial Decision issued on September 29, 2016 which partially sustained the Complaint of Mr. McLean. In his Complaint, Mr. McLean alleged that he did not reside at the service address from 2012 until December 2014 and therefore was not responsible for the service charges that accrued during that time-period. PGW filed Exceptions to the Initial Decision claiming that the Company established the Complainant's association with the service address through a credit report as is permitted by the Commission's regulations at Section 56.35(b)(2) of Title 52. 52 Pa. Code §56.35(b)(2). Presumed

Although I agree that PGW used the proper vehicle to establish residency resulting in the Complainant's responsibility for service rendered at the address, I am troubled by some of the events that transpired during the hearing. Mr. McLean was provided a telephonic hearing which I believe is customary to assist Complainants, Respondents and the Commission in providing efficient and effective due process. However, it became obvious from the outset of the hearing that there were significant concerns regarding the Complainant's ability to participate telephonically as he could not be heard by the Administrative Law Judge and the court reporter. Tr. 6,7, 17, 18, 20, 21, 25, and 33. When the Complainant was presenting his evidence, the ALJ had to stop the hearing numerous times to remind Mr. McLean to speak in a manner that was conducive for the Company, the ALJ and the court reporter to hear. *Id.* The transcript reflects several instances where the Complainant was simply inaudible. *Id.*

In addition, it appears that the Complainant had not received some of the Company's exhibits in a timely manner. Tr. 58-61. Because of this, PGW suggested that an additional hearing be convened for the additional exhibits to be reviewed and entered into the record and for the Complainant to have appropriate time to review the materials sent to him. Tr. 60-61. The ALJ determined that an additional hearing was not necessary. Tr. 61-62.

I believe that the circumstances presented during the June 2016 hearing should have caused the ALJ to recess the hearing to determine whether this case was appropriate for an in-person hearing in Philadelphia where the Complainant resides. During the recess, the ALJ could have determined if Mr. McLean wanted

to continue the hearing telephonically or present his case in person. In addition, a hearing recess could have been used to determine when the Company's exhibits were sent and whether the Complainant had enough time to review them.

Because of my concerns with the hearing held in this proceeding, I respectfully dissent in part.

DATED: October 26, 2017


Andrew G. Place, Vice Chairman

25-1787-1288

Many statements entered within that Decision are not Seminal (Derived From a Source) in representing Fulsome Conduct. as in or dox

We do not hold a transcript supporting and enforcing statements entered rendering the entire decision nugatory (devoid of a organized structure) and representing Putter. where the decision entered by ALS is steady.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kenneth McLean

v.

Philadelphia Gas Works

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C-2016-2539492

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

This decision partially sustains a formal complaint where a utility failed to demonstrate that the applicant resided at the service address and was responsible for the outstanding balance of another ratepayer and improperly transferred that balance to the applicant's account. The applicant is responsible for the portion of the balance which accrued during a period of time that he admits he was living at the service address.

HISTORY OF THE PROCEEDING

On March 29, 2016, Kenneth McLean (Complainant) filed a formal complaint against Philadelphia Gas Works (PGW), alleging that PGW had improperly transferred a balance to his account because he did not live at the service address during the time period when the balance accrued. PGW filed an answer on May 2, 2016, denying that there were incorrect charges on the Complainant's bill.

By hearing notice dated May 17, 2016, a telephonic hearing was scheduled for June 15, 2016, and the complaint was assigned to me for disposition. A prehearing order was issued on May 20, 2016.

The hearing convened as scheduled. Kenneth McLean appeared and testified on his own behalf. Laureto Farinas, Esquire appeared and represented PGW. He offered the testimony of one witness, Adrian Crawford. Five exhibits were admitted into the record on behalf of PGW. The hearing generated a transcript of 107 pages. Following the receipt of the transcript the record was closed by order dated July 25, 2016.

FINDINGS OF FACT

1. The Complainant, Kenneth McLean, resides at 1509 West 65th Avenue, Philadelphia, Pennsylvania (service address) and receives gas service from PGW at that address. (N.T. 9)
2. PGW is a jurisdictional public utility.
3. The Complainant began to occupy the service address in December 2014 or January 2015. (N.T. 20)
4. The Complainant was born at the service address and grew up there, but never lived or stayed there from 2011 until he moved in around December 2014. (N.T. 33, 35-36)
5. The Complainant contacted PGW on February 20, 2015, to establish service in his name. (N.T. 10; 44; PGW Ex. 1)
6. PGW assigned account number xxxxxx3582 to the Complainant. (N.T. 10)

7. The PGW customer service representative informed the Complainant that an account in the name of Thomas McLean, number xxxxxx6948, was associated with the service address. (N.T. 15; PGW Ex. 1)

8. Thomas McLean, the Complainant's father, died in 2009. (N.T. 17-18; 32)

9. PGW transferred the outstanding balance on Thomas McLean's account to the Complainant's account in the amount of \$1,541.49. (N.T. 48-49; PGW Ex. 2)

10. The balance of \$1,541.49 accrued from January 18, 2012 until February 23, 2015. (N.T. 63)

11. PGW informed the Complainant that based on the outcome of a credit check, PGW determined that the Complainant resided at the address and was responsible for the past-due balance on account xxxxxx6948. (N.T. 27; see N.T. 46)

12. The Complainant inherited the service address from Evelyn McLean, who died in 2014. (N.T. 9, 14, 33)

13. The Complainant has not worked since 2007. (N.T. 26, 28)

14. Before December 2014, the Complainant did not have a permanent address because he was homeless. (N.T. 18, 34)

15. PGW conducts credit searches using an applicant's name and social security number. (N.T. 64)

16. The credit background check indicated that the Complainant's last known address was in 1986 at the service address. (N.T. 71)

17. According to PGW, the credit background check did not indicate any other address, therefore PGW concluded that the Complainant resided at the property after 2011.
(N.T. 83-84)

18. The Complainant's testimony was credible.

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.¹ A person seeking affirmative relief from the Commission has the burden of proof.²

In this matter, the Complainant is the party seeking affirmative relief from the Commission; therefore, he has the burden of proof. This means that he has the duty to establish a fact by a preponderance of the evidence, and must show that the Company has violated the Public Utility Code or Commission regulations.³

The Complainant contends that he is not responsible for the balance which was accrued on the account from January 18, 2012 until February 23, 2015. He states that, until he inherited the property and moved there in December 2014 or January 2015, he did not live at the property. He was homeless in 2012 until he moved to the service address in 2014. He did not have a permanent address or a job during that period of time.

PGW takes the position that a credit report based on the Complainant's social security number does not indicate any other address for the Complainant after 1986. Therefore,

¹ 66 Pa.C.S. § 701.

² 66 Pa.C.S. § 332(a).

³ *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

according to PGW, because he cannot prove that he lived elsewhere, he is responsible for the bill pursuant to Section 56.35 of the Public Utility Code.⁴

When a person applies to have service in their name, Section 56.35 of the Public Utility Code provides that a utility can require a person to pay an outstanding account balance if they resided at the service address when the account was in the name of another person:

(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.

⁴ 52 Pa.Code § 56.35.

(3) Any outstanding residential account with the public utility may be amortized in accordance with § 56.191 (relating to payment and timing).

(c) This section does not affect the creditor rights and remedies of a public utility otherwise permitted by law.⁵

This regulation places the burden of proving that a person resided at a service address on the utility by requiring the utility to establish residency with the use of a “mortgage, deed or lease information, a commercially available consumer credit reporting service.”⁶

PGW relies solely on a customer contact record which indicates the result of a credit report stating that the Complainant’s last known address was the service address in 1986.⁷ Since the Complainant cannot demonstrate that he lived anywhere else, PGW concludes that he resided at the service address and is responsible for the outstanding balance. The Complainant admits that he lived at the service address in 1986. It is the home in which he grew up, and during that period of time he was attending college. However, he also testified credibly that during 2012 until he returned to the property after he inherited the home, he did not live there but was homeless. He disputes that he told the customer service representative when he called to establish service in his name, that he had always lived at the property. *no presumption*

no presumption that PGW

I find that PGW’s reliance on a credit report which only established the Complainant’s last known address in 1986 is insufficient by itself to establish that he benefitted from the service before December 2014. Section 56.35 does not place a burden on an applicant to prove that he did not reside at the service address. I find that the Complainant’s testimony that he was homeless is credible and PGW presented no reliable evidence to dispute his testimony.

⁵ 52 Pa.Code § 56.35.

⁶ 52 Pa.Code § 56.35(b)(2).

⁷ Documentation of the report itself was not presented by PGW as a hearing exhibit.

PGW's customer contact records include a notation that when he called PGW to establish service in February 2015, that he "confirmed he has always lived at the property."⁸ The Complainant testified that he did not tell the PGW customer service representative that he had always lived at the property. PGW did not present the customer service representative who spoke to the Complainant as a witness to dispute the Complainant's statement or provide context for the comment. Instead, PGW relied solely upon the testimony of Ms. Crawford who reviewed the records, but did not have direct personal knowledge. Although the customer contact record was admitted into evidence as a business record, the statement itself is hearsay.⁹ Admissions against interest made by a party have long been held to be admissible in civil proceedings as a recognized exception to the hearsay rule.¹⁰ However, it is only appropriate to apply this exception to the hearsay rule when there is sufficient corroborating evidence or other indicia to support the reliability of the statement.¹¹ In this record, there is no corroborating evidence in the form of testimony from the customer service representative who made the notation, nor is there other evidence to otherwise support the admission. Further, I find the Complainant's testimony credible and consistent with his testimony that he was homeless until December 2014.

However, the Complainant does admit that he moved to the service address in December 2014 or January 2015. He benefited from gas service that was provided to the service address at that time. Therefore, I find that he is responsible for payment of the outstanding balance for any usage which was recorded beginning in December 2014.¹²

In sum, PGW did not properly transfer the balance of a former ratepayer at the service address which accrued from January 18, 2012 until December 2014. However, the Complainant admitted that he moved into the service address in December 2014, and is

⁸ PGW Ex. 1 at page 5/5.

⁹ P.R.E. 801.

¹⁰ *C.S. Warthman Funeral Home, et al. v. GTE North, Incorporated*, Docket No. C-00924416 (Order entered June 4, 1993)(citing, *Geiger v. Schneyer*, 398 Pa. 69, 157 A.2d 56 (1959); *Gougher v. Hansler*, 388 Pa. 160, 130 A.2d 150 (1957); *Unemployment Compensation Board of Review v. Houpp*, 20 Pa. Commonwealth Ct. 111, 340 A.2d 588 (1975)).

¹¹ *London v. Viridian Energy PA. LLC*, Docket C-2011-2244309 (Final Order March 29, 2012).

¹² *Monahan v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2009-2111417 (Opinion and Order entered June 2, 2010); see also 66 Pa.C.S. § 1407(d).

responsible for any charges which accrued from December 2014, until he contacted PGW to have service placed in his name on February 20, 2015. PGW shall remove the charges which were improperly placed on the Complainant's account and recalculate the outstanding balance on his account.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant bears the burden of proof. 66 Pa.C.S. § 332.
3. In order to require the Complainant to pay an outstanding balance from before he requested service, PGW was required to prove that the Complainant resided at the service address through the use of a mortgage, deed, lease or reliable credit reporting information. 52 Pa.Code § 56.35.
4. A credit report which indicates that the Complainant's address was the service address in 1986, by itself is not sufficient to demonstrate that he resided at the service address from 2012 until 2014. 52 Pa.Code § 56.35.
5. When the Complainant admits that he resided at the service address for a period of time before he contacted PGW to have service placed in his name, he is responsible for those charges. 52 Pa.Code § 56.35.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Kenneth McLean against Philadelphia Gas Works at Docket No. C-2016-2539492, is sustained as to the claim that he is not responsible for charges associated with 1509 65th Avenue from 2011 until December 2014.

2. That PGW shall remove charges accrued from January 18, 2012 until December 1, 2014, from the Complainant's account, and within 10 days of the Commission's final order render a corrected bill to the Complainant along with an account statement which shows the amount removed from the Complainant's account.

3. That the formal complaint of Kenneth McLean against Philadelphia Gas Works at Docket No. C-2016-2539492, is dismissed in all other respects.

4. That upon notification from PGW that the Complainant's account has been corrected in conformance with Ordering Paragraph No. 2, the Secretary shall mark the docket closed.

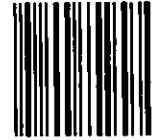
Date: September 12, 2016

_____/s/
Mary D. Long
Administrative Law Judge

K. McLean
1509 W. 65th Ave.
Phila., PA. 19126



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