

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah Frazier	:	
	:	
v.	:	F-2017-2623037
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

Deborah Frazier (Complainant) filed a complaint against Philadelphia Gas Works (PGW or Respondent or Company) alleging that the Company falsely accused her of unlawfully taking gas and incorrectly claimed that she owes the Company over \$5,000. She is also asking the Commission to order PGW to restore her gas service.

This decision finds that PGW did not commit a violation by requiring the Complainant to pay the outstanding amount owed for unauthorized usage prior to restoration of her gas service.

HISTORY OF THE PROCEEDING

On August 24, 2017, the Complainant filed a formal Complaint against PGW. This is a timely appeal of a decision of the Commission's Bureau of Consumer Services, Case No. 3532453. In the Complaint, Ms. Frazier states that she has been falsely accused by PGW of stealing gas. She also states that the Respondent claims that she owes the Company over \$5,000

and that a PGW technician claims to have found something in her home that she does not own. She would like to see actual proof of PGW's claims and she would like the Commission to order PGW to restore her gas service.

On September 26, 2017, PGW filed an Answer denying the material allegations of the Complaint. PGW also stated in the Answer that the Complainant maintained gas service at the service address from July 2, 2012 to April 8, 2013, when a technician turned off the service at the request of the Complainant. The Answer further states that on April 20, 2017, the gas was found "on" at the curb and re-curbed by a PGW technician. On May 5, 2017, the Complainant contacted PGW to turn on the gas service. PGW further avers that on May 8, 2017, a technician visited the service address to turn on the service and could not find a gas meter, but noted several gas appliances at the service address. PGW also states in its Answer that the Complainant was billed for bypass charges from April 8, 2013 to April 20, 2017, based on prior historical usage.

A hearing was held on December 1, 2017, as scheduled. The Complainant appeared *pro se* and presented the following three exhibits, which were entered into the record:

- Complainant 1 - Addendum to lease
- Complainant 2 - Informal Complaint decision
- Complainant 3 - Collection Agency Referral Notice

PGW was represented by Graciela C. Christlieb, Esquire, who presented PGW employees Lachone Ennis, Oluwa Sandy, and Jessica Glace as witnesses. Attorney Christlieb also introduced the following seven exhibits, which were entered into the record:

- PGW 1 - Curb Valve Recheck
- PGW 2 - Turn on Documents
- PGW 3 - Utility Service Agreement
- PGW 4 - Customer Contact 5/5/2017
- PGW 5 - Customer Contact 5/8/2017
- PGW 6 - Historic Usage
- PGW 7 - PUC Case Record

The record closed on January 10, 2018, upon receipt of the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this proceeding is Deborah Frazier, who resides and previously had PGW service at 5844 Belmar, Philadelphia, Pennsylvania. (service address).
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. Ms. Frazier began leasing the service address as her residence on July 12, 2012. (Tr. 26).
4. The service address is a house. (Tr. 40).
5. The Complainant works as a private duty live-in nurse and would come and go to the service address. (Tr. 17, 27).
6. Ms. Frazier's son lives with her at the service address. (Tr. 8-9).
7. Ms. Frazier has a second son who has a key to the property and can access the property at will. (Tr. 9).
8. When a longtime patient of the Complainant died, she no longer had income and had her gas and cable service shut off. (Tr. 7).
9. Ms. Frazier requested that PGW turn off her gas service on or about April 8, 2013. (Tr. 79; PGW Exhibit 3).
10. On April 20, 2017, PECO Cadet Lachone Ennis visited the service address for a curb valve recheck (*i.e.* to check that the curb valve is in the “off” position). (Tr. 43).
11. Cadet Ennis found the curb valve in the “on” position. (Tr. 44).
12. After finding the curb valve in the “on” position, Cadet Ennis shut off the valve and placed a safety lock inside of the curb box. (Tr. 44; PGW Exhibit 1).

13. On May 5, 2017, the Complainant called PGW to have the gas service restored. (Tr. 81; PGW Exhibit 4).

14. When the Complainant first called PGW to request service restoration, a PGW representative told the Complainant that there was a \$180 turn on charge, which was waived after the Complainant informed the representative that she was unemployed. (Tr. 10, 81; PGW Exhibit 4).

15. PGW Cadet Oluwa Sandy was sent to the service address to turn on the service on May 8, 2017. (Tr. 53; PGW Exhibit 2).

16. Cadet Sandy had called the Complainant prior to going to the service address and the Complainant informed him that there was no meter at the service address and that she had no idea where it was taken. (Tr. 61).

17. There was no meter at the service address and the gas was shut off when Cadet Sandy arrived on May 8, 2017. (Tr. 54).

18. Following the discovery that there was no meter at the property, Cadet Sandy placed a lock on the meter bar and initiated an unauthorized usage investigation. (Tr. 55).

19. As part of this investigation, Cadet Sandy noted the gas appliances at the service address. (Tr. 56; PGW Exhibit 2, p. 2).

20. There is a gas heater, gas dryer and gas water heater at the service address. (Tr. 14).

21. Cadet Sandy did not list a gas stove as an appliance at the service address. (Tr. 56; PGW Exhibit 2, p. 2).

22. During the investigation, using a SENSIT gas reading device, Cadet Sandy checked the gas appliances at the service address to determine whether gas was being used. (Tr. 56; PGW Exhibit 2, pp. 3-4).

23. The result of the SENSIT test was that gas was recently used in the appliances. (Tr. 57).

24. Following the investigation, PGW billed Ms. Frazier for the period April 8, 2013 through April 20, 2017 based on historical usage. (Tr. 84; PGW Exhibit 6).

25. PGW informed the Complainant that she must pay unauthorized usage charges of \$5,125.19 plus a reconnection fee of \$123.23 for a total of \$5,248.42 before it will restore service. (Tr. 86, 90).

26. The Complainant did not personally remove the meter or turn on the curb valve.

27. The amount sought by PGW is for service to the service address. (Tr. 37, 87).

DISCUSSION

Ms. Frazier's Complaint is that PGW is accusing her of theft of service, that PGW is billing her over \$5,000 in unauthorized usage charges, and that PGW is requiring her to pay the outstanding amount before restoration of her gas service. She would like these charges to be removed or for PGW to not require payment of these charges before her gas service is restored. She also contends that the bill is incorrect and too high because she is being billed for an appliance that she does not have at the service address.

Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof. 66 Pa.C.S.A. § 332(a).

Section 332(a) of the Public Utility Code places the burden of proof on the party seeking relief from the Commission. 66 Pa.C.S. § 332(a). Therefore, in order to prevail, a complainant must show that the utility is responsible or accountable for the problem described in

the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). "Burden of proof" is 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 alleged and proven must in violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

If a complainant establishes a *prima facie* case, the burden of presenting the evidence shifts to the utility. The complainant will prevail if a utility does not rebut the complainant's evidence. Where a utility presents rebuttal evidence, the burden of going forward with the evidence shifts back to the complainant, who to prevail 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 is always that of a complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth 1982).

Generally, where a complainant alleges a high bill, a complainant may establish a *prima facie* case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If the Complainant has submitted such evidence, the burden of going forward with evidence shifts to the Respondent. *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*).

The Commonwealth Court expanded on the Commission's *Waldron* ruling in *Milkie v. Pa. Pub. Util. Comm'n.*, 768 A. 2d 1217 (Pa.Cmwlth. 2001). The Commonwealth Court held that the customer may prove his or her case by circumstantial evidence and that in making its determination, the Commission may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. *Id.*; *see also Bennett v Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v PECO Energy Co.*, Docket No. C-2010-2187197 (Order entered November 15, 2011). The burden of proof always remains on the party seeking

affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

The Public Utility Code provides that "[a] public utility may also 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 and for the time the applicant resided there." 66 Pa.C.S. § 1407(d). A utility may also charge a reconnection fee. 66 Pa.C.S. § 1407(a).

Ms. Frazier challenges any PGW claim that she stole gas. The evidence shows that she called PGW to shut off the service in 2013 and did not call PGW to restore the service until two weeks after PGW shut off the service at the curb in 2017. However, there is no evidence that Ms. Frazier personally turned on the gas for unauthorized usage or removed the gas meter from her property. Ms. Frazier acknowledged during the hearing that "something happened at my property" and that she would have to pay PGW. (Tr. 95). She questions, however, whether the amount of the bill is correct.

In particular, Ms. Frazier believed that PGW is mistakenly charging her for usage for a gas stove. She testified that when she called PGW after her request to have the gas service turned on, she discovered that a PGW technician was at an address on 45th Street, where she lived over ten years ago and had a gas stove. (Tr. 11, 13). She further testified that she did not have a gas stove at the service address at issue and presented an addendum to her lease which showed that the service address was leased with an electric stove. (Tr. 12; Complainant 1). Her belief is further supported by the Answer filed by PGW in this matter which states that an appliance found at the service address was a 22,000 BTU range. (Answer, p.1).

In response, PGW presented evidence indicating that the gas stove was not included in the calculations. PGW Senior Customer Review Officer Jessica Glace testified that the outstanding bill for Ms. Frazier is for usage only at the service address, not her previous address. There was no evidence to the contrary.

Also, the Company did not charge Ms. Frazier for usage of a gas stove at the service address. During his visit to the service address in May of 2017, Cadet Sandy noted in his records that the Complainant had three appliances - gas dryer, gas heater and gas water heater- and did not list a gas stove. (PGW Exhibit 2, p.2). Moreover, PGW did not bill Ms. Frazier based on the BTUs of her appliances. Instead, PGW billed her based on historical usage for the period April 8, 2013, through April 20, 2017. (Tr. 84; PGW Exhibit 6). Ms. Frazier did not contest this and presented no evidence to counter calculations based on historical usage or historical usage records.

The Complainant is an Applicant for service, seeking restoration of gas for the service address. *See* 52 Pa. Code § 56.2. She was and is the lessor of the service address for the period in question and resided at the property when not employed in sporadic short-term private nursing positions after her request to shut off the gas in 2013. (Tr. 28). Therefore, PGW may require payment of the outstanding balance for the period of unauthorized usage and a reconnection fee before restoring her gas at the service address. 66 Pa.C.S. § 1407(d), § 1407(a).

The facts presented do not establish the Complainant's case. The record supports a finding that PGW did not violate the Code, regulations or a Commission Order by issuing the Complainant a bill for unauthorized usage and requiring payment in full prior to providing gas service to the Complainant. (Tr. 90).

Therefore, the Complainant cannot prevail, and the matter will be dismissed.

CONCLUSIONS OF LAW

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

2. As the proponent of a rule or order, the Complainant in this proceeding has the burden of proof. 66 Pa.C.S.A. § 332(a).

