

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Kelvin E. Thomas
v.
Philadelphia Gas Works
(Complaint Appellant)

Public Meeting held August 2, 2018
2611788-ALJ
F-2017-2611788

Kelvin E. Thomas
v.
Philadelphia Gas Works

C-2017-2621275

MOTION OF COMMISSIONER DAVID W. SWEET

Before us is the Initial Decision (ID) of Administrative Law Judge Marta Guhl (ALJ) in the cases of Philadelphia Gas Works' (PGW) timely appeal of an informal decision issued by the Commission's Bureau of Consumer Services (BCS)¹ in an informal complaint brought by Kelvin E. Thomas against PGW, consolidated with a separate complaint filed several months later by Mr. Thomas, also against PGW. At the hearing, PGW stated that its appeal was limited to one issue, whether the time period for which PGW billed Mr. Thomas for unauthorized usage was correctly shortened by BCS,² and the ALJ ruled that the hearing would be limited to that issue.

A timely appeal from an informal determination of BCS is *de novo*.³ This means that there is no part of the record in the informal proceeding that can be relied upon in the formal proceeding, and the discussion of PGW's meeting its burden of proof is both unnecessary and inaccurate. The burden of proof remains with the party who filed the original complaint,⁴ except for those legal issues raised by the utility on appeal.⁵ When Mr. Thomas failed to attend the hearing on both complaints, he failed to sustain his burden of proving both complaints, and they should have been dismissed for failure to prosecute.

¹ Note that the caption has been corrected to comply with 52 Pa. Code §1.73(c).

² Tr. 7-8.

³ 52 Pa. Code §56.403(a).

⁴ 52 Pa. Code §56.173(f) is part of the ongoing rulemaking at Docket No. L-2015-2508421, *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S. Chapter 14* which explains that the language will be revised to clarify that the burden of proof remains with the party who filed the informal complaint in order to be consistent with Commission practice. Order of July 21, 2016 at p. 9. As Commission jurisdiction covers utilities and licensees, but only extends to those consumers who voluntarily submit to it, the only way to provide a meaningful appeal from a BCS determination is to start over, with the complainant in the informal BCS investigation as the complainant in the formal case arising from it.

⁵ See *Patrick Rafferty v. Verizon Pennsylvania, Inc.*, Docket No. F-02211831 (Opinion and Order entered December 22, 2008); *Claypool v. T.W. Phillips Gas & Oil Company*, 1995 Pa. PUC LEXIS 160 (Opinion and Order entered December 22, 1995); *Zapp v. Equitable Gas Company*, Docket No. Z-8188326, 1982 Pa. PUC LEXIS 127, 55 Pa. PUC 701 (Order entered April 2, 1982) ("The filing of such an appeal does not shift the burden of proof to the party taking the appeal, the burden of proof remains with the original complainant."); *Corinne Hackett v. Columbia Gas of Pennsylvania, Inc., Complaint Appellant*, Docket No. C-2012-2308429, 2013 Pa. PUC LEXIS 527 (citing a change in the 2011 Chapter 56 rulemaking that erroneously states that the burden of proof remains with the party who filed the formal complaint, instead of informal complaint. The burden of proof in the BCS decision is with the complainant, and therefore, it would "remain" with the original complainant. It could not "remain" with the utility, which did not have the burden of proof at all).

When an informal determination is timely appealed and not prosecuted, the decision of the BCS does not stand.⁶

All of this would be true here if the record reflected due process in the case below. Here, however, there were multiple attempts at service where the process was returned as undeliverable although there is no mention of this in the History of the Proceedings. Mr. Thomas had provided an address for service which was not the subject of the case, and service to this address, North 25th Street, was returned as undeliverable. One attempt at service went to North Grant Street, instead of the subject address of North Gratz Street. When Mr. Thomas filed his own complaint at the second docket, he stated his address as North Gratz Street, but when he filed an amended complaint, he listed North 25th. This confusion raises doubts regarding whether there had been service of important documents.

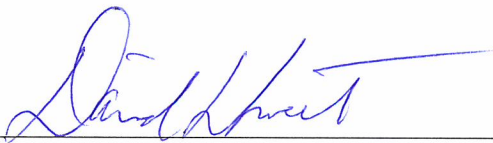
I recognize that it is the responsibility of the party to ensure that the accurate address for service is maintained by the Commission,⁷ and in this situation, it is not clear that he has done so. However, in an abundance of caution, I propose to remand the matter to the Office of Administrative Law Judge to start this case again, with service of every document, to both addresses, unless Mr. Thomas provides another address, and a clear application of the burden of proof.

THEREFORE,

I MOVE:

1. That the cases of Kelvin E. Thomas v. Philadelphia Gas Works, Complaint Appellant, at Docket No. F-2017-2611788, and Kelvin E. Thomas v. Philadelphia Gas Works, at Docket No. C-2017-2621275, are remanded to the Office of Administrative Law Judge for additional proceedings consistent with this Motion.
2. That the Initial Decision of Administrative Law Judge Marta Guhl is vacated.
3. That the Office of Special Assistants prepare an appropriate order consistent with this motion.

August 2, 2018
DATE



DAVID W. SWEET
COMMISSIONER

⁶ I note that PGW testimony effectively rebutted the BCS holding that a leak survey would detect unauthorized usage. In fact, it only detects leaks. Unauthorized usage that was not leaking would not be detected. Tr. 48-50.

⁷ 52 Pa. Code § 1.53(d). *Change of address*. It is the duty of a party to apprise the Commission promptly of changes to the party's current address.

Although the ALJ indicates on the transcript that she spoke to Mr. Thomas to assure him that the hearing would be held despite inclement weather, he did not attend the in-person hearing, and there is no mention of this conversation in the ID. Tr. 4-5.