

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Phyllis Amirah Maddox	:	
	:	
v.	:	F-2017-2636304
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This decision dismisses in part and grants in part the Complainant’s Complaint against Respondent, Philadelphia Gas Works. The Complainant failed to meet her burden of establishing that Respondent erred in transferring her tenant’s balance to her account after the discovery of a foreign load at the Service Address. The Complainant was able to meet her burden of proof that she is entitled to a payment arrangement under Section 1405 of the Public Utility Code.

HISTORY OF THE PROCEEDING

On November 30, 2017, Ms. Phyllis Amirah Maddox (Complainant) filed a formal Complaint against Philadelphia Gas Works (PGW, Company or Respondent). Complainant alleged that there were incorrect charges on her bill specifically related to tenant balances that had been transferred to her account after a foreign load was discovered at the Service Address of 5226 West Berks Street, Philadelphia, Pennsylvania 19131, which Complainant owns. She also requested a payment arrangement.

This is an appeal of an informal complaint filed by the Complainant with the Bureau of Consumer Services (BCS) at case number 3558029. The BCS decision dismissed the informal complaint regarding the foreign load but granted the Complainant a Level 4 payment arrangement.

On December 21, 2017, PGW filed an Answer denying the material allegations of the Complaint. PGW noted that it verified there was a foreign load issue at the Service Address and transferred the tenant's account balance to a new account under the Complainant's name. PGW also indicated that there was no indication that the foreign load issue at the Service Address has been resolved.

On January 19, 2018, a Hearing Notice was sent scheduling an Initial Hearing on March 7, 2018,¹ at 10:00 a.m. and assigning the case to me.

By Prehearing Order dated January 25, 2018, I gave procedures for the hearing process.

On March 9, 2018, via a Hearing Cancellation/Reschedule Notice, the matter was rescheduled for an Initial Hearing on April 30, 2018, at 10:00 a.m.

On April 30, 2018, the Initial Hearing convened as scheduled. Complainant was present and represented herself. Graciela Christlieb, Esquire, was present as counsel for PGW and presented one witness, Ms. Tiffany Jones. Complainant presented no exhibits during the evidentiary hearing. PGW presented four exhibits during the Initial Hearing and all PGW exhibits were admitted into the record.

The evidentiary hearing generated 45 pages of transcribed testimony. The record closed on May 31, 2018, after I received my copy of the transcript.

¹ The matter was rescheduled due to the closing of state offices in Philadelphia because of inclement weather.

FINDINGS OF FACT

1. Complainant, Phyllis Amirah Maddox, co-owns 5226 West Berks Street, Philadelphia, Pennsylvania 19131 (“Service Address”), with her son, Keath T. Lowry, where their tenants received gas service from PGW. Tr. 10, 25; PGW Exh. 1.
2. Respondent is Philadelphia Gas Works.
3. The Service Address has two apartments contained in the building, divided by the first and second floor. Tr. 10.
4. The Complainant purchased the Service Address in 1970. Tr. 10.
5. The second-floor apartment was occupied by the Complainant’s son, Keath Lowry, and then by her cousin, Charles McIntosh. Tr. 12, 14-15.
6. Service was established for the first-floor tenant, Wanda Gary, based on a lease agreement with the Complainant. Tr. 24.
7. On December 14, 2016, PGW sent a technician, Andrew Lucas, to trace the meter and piping at the Service Address. Tr. 32-33; PGW Exh. 2.
8. A trace meter and piping investigation traces meters and determines if everything is connected to the proper meter. Tr. 32.
9. These investigations are conducted to determine whether there is a foreign load. Tr. 32.
10. Mr. Lucas found one meter for the entire property and one hot water heater, one house heater, and two gas ranges. Tr. 33; PGW Exh. 2.

11. One gas range was located in the first-floor apartment and the second gas range was located in the second-floor apartment. Tr. 33; PGW Exh. 2.

12. The Complainant is retired and has a pension payment of approximately \$3,200.00 per month. Tr. 16.

13. The Complainant also receives \$1,300.00 per month in rental income from the Service Address. Tr. 21.

14. The Complainant is the only person in her household. PGW Exh. 4.

15. The Complainant's current monthly household income of \$4,500.00 with one household member places the household at 445% of the Federal Poverty guidelines.²

16. The Complainant has not made the necessary changes at the Service Address to eliminate the foreign load. Tr. 14, 35.

17. On December 16, 2016, PGW transferred a total of \$9,321.17 from Wanda Gary's account for the Service Address to a new account in the Complainant's name. Tr. 39; PGW Exh 3.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 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

² *Federal Register*, Vol. 83, No. 12, pp. 2642-44 (January 18, 2018). *Also see*, <http://aspe.hhs.gov/poverty>.

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.Cmwlth. 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.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 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).

Foreign Load

The first issue in this proceeding is whether the Complainant satisfied her burden of proof regarding her request that the tenant balance be removed from her outstanding balance.

The present case raises the issue of whether Respondent utility acted properly in placing the balance of the account for gas service for the first-floor tenant at the Service Address in Complainant's name. In doing so, Respondent followed 66 Pa.C.S. § 1529.1(b) of the Public Utility Code, which provides in pertinent part that, "if the mobile home or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto." (Emphasis added). See also, *Del Vecchio v. PPL Electric Utilities Corp.*, Docket No. Z-01464793 (Order entered September 13, 2005). In *Del Vecchio*, the Commission found the utility violated 66 Pa.C.S. § 1529.1, because it failed to transfer complainant's electric account to the landlord when it found foreign load on complainant's meter.

Hence, a plain reading of 66 Pa.C.S. § 1529.1 holds a property owner financially responsible for a tenant's entire account, once foreign load is verified on the tenant's utility service. *Santos v. Metropolitan Edison Co.*, Docket No. C-00967757 (Order entered August 7, 1997). Upon finding foreign load, the utility must list the account, including any arrearage, in the name of the landlord. The landlord bears the responsibility of paying the utility bills until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. However, the arrearage, if any, remains with the landlord. *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010). There is no *de minimus* exception; any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission's jurisdiction. *Id.*

In this matter, PGW properly identified the foreign load issue at the Service Address. The Service Address has two apartments contained in the building, divided by the first floor and second floor. Tr. 10. Service was established for the first-floor tenant, Wanda Gary, based on a lease agreement with the Complainant. Tr. 24. The second-floor apartment was occupied by the Complainant's son, Keath Lowry, and then, by her cousin, Charles McIntosh. Tr. 12, 14-15.

On December 14, 2016, PGW sent a technician, Andrew Lucas, to trace the meter and piping at the Service Address. Tr. 32-33; PGW Exh. 2. A trace meter and piping investigation is conducted to trace meters and determine if everything is connected to the proper meter. Tr. 32. These investigations are conducted to determine whether there is a foreign load. Tr. 32. Mr. Lucas found one meter for the entire property and one hot water heater, one house heater, and two gas ranges. Tr. 33; PGW Exh. 2. One gas range was located in the first-floor apartment and the second gas range was located in the second-floor apartment. Tr. 33; PGW Exh. 2.

The Complainant has not met her burden of proof regarding the foreign load issue. The Complainant acknowledged that there are two apartments in the Service Address and that the first-floor tenant was required to put gas utility service in her name for the entire Service Address as part of the lease agreement. PGW's technician found that there was only one meter for the entire property and that there was only one house heater and one hot water heater servicing the entire Service Address. The Complainant also acknowledged that there was a foreign load issue at the Service Address.

Ms. Jones, PGW's witness, indicated in her testimony that on December 16, 2016, PGW transferred a total of \$9,321.17 from Wanda Gary's account for the Service Address to a new account in the Complainant's name. Tr. 39; PGW Exh 3. PGW's records indicated that the Complainant has not made the necessary changes at the Service Address to eliminate the foreign load, which the Complainant acknowledged in her testimony. Tr. 14, 35.

Based on all of the above, it is clear that the Complainant has not proven that PGW was in error in transferring the tenant balance. There was a tenant living in the first-floor apartment who was required to place the gas utility service in her name as part of her lease agreement with the Complainant. A foreign load was discovered at the Service Address on December 14, 2016, when a PGW technician visited the address for a piping and meter investigation. Further, the foreign load has not been addressed or corrected as of the date of the hearing. PGW acted properly under the law when it transferred the tenant balance for the first-floor apartment at the Service Address to the Complainant's name. 66 Pa.C.S. § 1529.1; see also,

Del Vecchio. Lastly, the law does not allow the balances to be removed from the property owner's account after the discovery of foreign load. See *Ace Check Cashing Inc.* As such, the Complainant's Complaint must be dismissed in this regard.

Payment Arrangement

Complainant also requests a payment arrangement for the outstanding balance that she owes on the new account for the Service Address.

The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement. This law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(a) of the Public Utility Code reads as follows:

§ 1405. Payment arrangements

(66) GENERAL RULE.—The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

66 Pa.C.S. § 1405(a).

The Complainant is retired and has a pension payment of approximately \$3,200.00 per month. Tr. 16. The Complainant also receives \$1,300.00 per month in rental income from the Service Address. Tr. 21. The Complainant is the only person in her household. PGW Exh. 4. The Complainant's current household income of \$4,500.00 with one household member places the household at 445% of the Federal Poverty guidelines. This makes the Complainant a Level Four customer under the Public Utility Code. See 66 Pa.C.S. § 1405(b)(4).

Accordingly, based on her household composition and income, the Commission has the authority to establish a six-month payment agreement pursuant to the Public Utility Code. 66 Pa.C.S. § 1405(b)(4). Beginning with the first bill following the Commission’s Final Order in this case, Complainant is required to pay her current charges plus an amount equal to one-sixth ($\frac{1}{6}^{\text{th}}$) of the balance accrued on her account. If Ms. Maddox fails to keep this payment schedule, PGW is authorized to suspend or terminate her service consistent with the Commission’s statute and regulations.

CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving that she is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. “Burden of proof” means a duty to establish one’s case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, then the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

4. Section 1529.1(b) of the Public Utility Code provides in pertinent part that, “if the mobile home or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto.” 66 Pa.C.S. § 1529.1(b).

5. Complainant has not sustained her burden of proof regarding her request that her tenant’s balance be removed from her account balance.

6. The Responsible Utility Customer Protection Act, 66 Pa.C.S. § 1401 *et seq.* (the Act or Chapter 14), applies to complaints alleging inability to pay and requesting a Commission-issued payment arrangement.

7. The Commission has the authority to establish a payment arrangement of six months for a customer if the customer's income is exceeding 300% of the federal poverty level. 66 Pa.C.S. § 1405(b)(4).

8. The Complainant has met her burden of proof in establishing that she is entitled to a payment arrangement of six months.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Phyllis Amirah Maddox against Philadelphia Gas Works at Docket No. F-2017-2636304 is denied in part and granted in part;

2. That the portion of the Complainant's Complaint related to foreign load discovered at the Service Address is denied;

3. That Philadelphia Gas Works shall calculate the bills for Complainant in order for Complainant to pay her current charges plus an amount equal to one-sixth ($\frac{1}{6}$ th) of the balance accrued on the account, consistent with this decision;

4. That as long as Phyllis Amirah Maddox keeps the payment schedule stated in this Order, Philadelphia Gas Works shall not suspend or terminate her utility service except

