

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Victor Ruffin	:	
	:	
v.	:	F-2018-2646481
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision sustains in part and denies in part the Complainant’s Complaint. The Complaint is sustained in that the Complainant is not responsible for unauthorized gas usage that occurred at the service address between October 22, 2004 and January 23, 2007. The Complaint is denied in that the Complainant is responsible for unauthorized gas usage that occurred at the service address between January 24, 2007 and June 4, 2014.

HISTORY OF THE PROCEEDING

On February 2, 2018, Victor Ruffin (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box indicating “I am having a reliability, safety or quality problem with my utility service,” next to which he provided the following statement:

I purchased the property in 2007 they gave me a bill from 2004 until 2014. Part of buying the property was to leave the person that was living there until ready to move. Name Wanda Diaz.

Under the “requested relief” section, the Complainant provided the following statement:

I just want a reasonable bill. I admit to being in the property from 2013-2014 but 21,000 dollars is a little over the roof if I say so myself.

On March 2, 2018, Respondent filed an Answer denying that there is a reliability, safety or quality problem with the utility service at 1332 E. Airdrie Street, Philadelphia, PA (service address). Respondent further indicated: that the Complainant established service at the service address on May 2, 2003; that PGW records show that gas service at the service address was terminated for non-payment; that on May 30, 2014, a PGW technician attempted to gain access to the service address but was unable to do so; that on June 4, 2014, PGW’s Distribution department was on location to abandon the service; that on June 4, 2014, the Complainant refused PGW access to the gas meter; that on November 9, 2017, the Complainant contacted PGW to request service restoration; that also on November 9, 2017, a PGW technician arrived at the service address and found a tampered meter bypass, removed the meter and left a post-termination notice; that the information was sent to PGW’s Revenue Protection Unit (RPU); and that on November 15, 2017, PGW charged the Complainant for usage from October 2004 through June 2014 for the bypass. Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice dated March 14, 2018, a hearing was scheduled for May 4, 2018, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on March 14, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

On April 27, 2018, I received from the Complainant a letter requesting a postponement of the May 4, 2018 hearing. Since it did not appear that the Complainant had provided a copy of his postponement request to PGW as required by my March 14, 2018, Prehearing Order, I forwarded the request to Graciela Christlieb, Esq., counsel for PGW. I subsequently received a response from Ms. Christlieb indicating that PGW objected to granting the Complainant's request.

By Order dated April 30, 2018, I denied the Complainant's request for postponement.

The hearing convened as scheduled on May 4, 2018. Complainant appeared *pro se* and testified. Complainant offered four exhibits which were all admitted into the record. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented testimony from the following witnesses: Darrell Benjamin, a Meter Investigation Unit (MIU) Cadet; Nicholas Simeo, a Revenue Protection Unit (RPU) Supervisor; Jessica Glace, a Senior Customer Review Officer; and Richard Lipscomb.¹ Respondent identified 16 exhibits during the hearing, 15 of which were admitted into the record (PGW Exhibits 1-11 and PGW Exhs. 13-16).

The record in this case consists of a 142-page transcript and 19 exhibits. The record closed on June 6, 2018, when I received the transcript of the May 4, 2018 hearing.

FINDINGS OF FACT

1. The Complainant in this case is Victor Ruffin.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant resides at 1332 East Airdrie Street, Philadelphia, PA 19124 (service address). Tr. 16-17, 35.

¹ Although Mr. Lipscomb did not provide his title during the hearing, testimony provided during the hearing demonstrated that he is a member of PGW's Distribution Crew. Tr. 85-86.

4. PGW terminated gas service at the service address on April 30, 2003. At the time of termination, gas service was not in the Complainant's name. Tr. 76; PGW Exh. 3.

5. Following termination on April 30, 2003, PGW never restored gas service to the service address. Tr. 76.

6. In 2004, the Complainant was residing at 5859 North Leithgow Street, a property he has owned since 1997. Tr. 19, 30.

7. On October 22, 2004, the Complainant was present at the service address when two PGW technicians arrived, and he signed a document acknowledging that he allowed the PGW workers into the service address that day. Tr. 18-19, 48-49, 78, 92; PGW Exh. 10.

8. During the October 22, 2004, site visit, the PGW technicians discovered that the gas had been turned on, and that the meter had recorded the usage that had transpired since the April 30, 2003 termination. Tr. 78; PGW Exh. 4.

9. The PGW technicians shut the gas off with "a plug swivel, wing lock and two handcuffs on the meter" during the October 22, 2004, visit. Tr. 79, 81, 92; PGW Exhs. 4, 5 & 10.

10. On or about November 1, 2004, PGW issued a bill to the Complainant requesting payment of \$2,740.76 for the unauthorized gas usage that occurred between April 30, 2003 and October 22, 2004. Tr. 19, 79, 117; PGW Exhs. 4 & 13.

11. Complainant never paid the \$2,740.76 bill. Tr. 120, 122.

12. Once a gas meter is installed at a service address it should never be tilted. Tr. 94.

13. A “tamper count” will indicate if someone is tilting and tampering with the meter, or with devices inside the meter. Tr. 93-94.

14. As of December 31, 2004, the gas meter at the service address registered a “tamper count” of one. Tr. 94; PGW Exh. 10.

15. As of February 1, 2005, the gas meter at the service address registered a “tamper count” of two. Tr. 94; PGW Exh. 10.

16. No additional gas usage has registered on the gas meter at the service address. PGW Exh. 10.

17. On January 24, 2007, the Complainant purchased the service address from his friend, Hector Rivera. Tr. 17, 27; PGW Exh. 11.

18. Mr. Rivera’s niece, Wanda Diaz, was living at the service address when the Complainant purchased the property. Tr. 28.

19. The Complainant allowed Ms. Diaz to continue residing at the service address after he purchased the property. Tr. 29.

20. The Complainant was incarcerated from September 19, 2007, until February 2012. Tr 21-22, 28-29; Comp. Exh. 4.

21. The Complainant resided at a half-way house between February 2, 2012 and July 2, 2012. Tr. 29; Comp Exh. 4.

22. When the Complainant left the half-way house, he moved back to his North Leithgow Street property. Tr. 31-32.

23. On an unspecified date in 2013, the Complainant changed the locks at the service address and evicted Ms. Diaz for failure to pay rent. Tr. 28, 30-31.

24. The Complainant moved into the service address on an unspecified date in 2013. Tr. 36.

25. On May 30, 2014, PGW received a tip through its “tip line” that there was unauthorized gas usage at the service address. Tr. 82-83; PGW Exh. 6.

26. On May 30, 2014, a PGW Technician from PGW’s Revenue Protection Unit visited the service address on an unbilled usage tip order. Tr. 84; PGW Exh. 6.

27. No one was available at the service address at the time of the PGW technician’s May 30, 2014 visit. Tr. 84; PGW Exh. 6.

28. The technician left a “dig notice” at the service address advising that he was there to investigate the meter and possible theft, and that if PGW was not able to gain access, gas service at the service address would be dug up and abandoned. Tr. 84; PGW Exh. 6.

29. On June 4, 2014, a PGW crew went to the service address to dig up and abandon the gas service. Tr. 84-85; PGW Exh. 6.

30. On June 4, 2014, the Complainant was present at the service address but refused to allow the PGW workers access to inspect the gas meter. Tr. 37, 86, 134; PGW Exh. 6.

31. Following the Complainant’s refusal to allow access, PGW abandoned the gas service at the service address. Tr. 87-88, 135.

32. After abandoning service, PGW placed a blocker on the service address requiring a safety check before service can be renewed. Tr. 89; PGW Exh. 8.

33. On November 9, 2017, the Complainant contacted PGW to request gas service at the service address. Tr. 39.

34. A PGW Technician was at the service address on November 9, 2017 to complete a safety appointment check. Tr. 64; PGW Exh. 1.

35. The Complainant was present during the November 9, 2017, safety appointment check. Tr. 41.

36. During this visit, the PGW Technician found the gas meter on a shelf laying sideways, and a flex connector hose installed where the meter should be, which would allow gas to flow freely to gas appliances at the service address. Tr. 65-66, 68-69; PGW Exh. 1.

37. The “wing lock” on a gas pipe is an anti-theft device. Tr. 66.

38. The PGW technician discovered that the “wing lock” on the gas pipe at the service address had been pried up to allow the gas to be turned on. Tr. 67-68.

39. The technician removed the meter, shut the gas off with two bike locks, locking plugs inlet to outlet and curbed the gas service with an expander. PGW Exh. 9.

40. During the November 9, 2017, visit, the technician observed a 100,000 BTU gas house heater and a 60,000 BTU gas water heater that were both hooked up to the gas line. Tr. 69, 71; PGW Exhs. 2 & 9.

41. PGW subsequently billed the Complainant \$20,901.10 for unauthorized usage at the service address from October 22, 2004 through June 3, 2014, based on historical usage. Tr. 123; PGW Exh. 15.

DISCUSSION

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

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. 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).

Responsibility for Balance that Accrued Between October 22, 2004 and June 3, 2014

The Complainant asserted that he should not be held responsible for all of the charges that accrued at the service address between October 22, 2004 and June 3, 2014, since he did not live there during that entire period. The Complainant insisted that he was not living at the service address in 2004 when PGW workers visited the service address, that he was only there at the previous owner's request to meet and grant entry to the PGW workers. The Complainant further testified that although he purchased the service address in 2007, he purchased it as a rental property and did not move into the service address until after his tenant left in 2013. Complainant maintained that, prior to moving into the service address in 2013, he resided at his property located at 5859 North Leithgow Street, his mother's house on Rising Sun Avenue, or in prison. Complainant does not believe he should be held responsible for charges that accrued at the service address prior to when he moved into the property in 2013.

PGW maintained that the Complainant is responsible for the charges for unauthorized usage beginning on October 22, 2004 because he was present at the service address on that date and signed an acknowledgment form when PGW workers arrived to inspect the gas service. PGW further maintained that the Complainant is responsible for these charges based on his ownership of the property since 2007.

Regarding the payment of an outstanding balance, Commission regulations provide in pertinent part:

A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years from the date of

the service request. The 4-year limit does not apply if the balance includes amounts that the utility was not aware of because of fraud or theft on the part of the applicant.

52 Pa.Code § 56.35(b)(1) (emphasis added).

Commission regulations permit the utility to require payment beyond the 4-year limit in 52 Pa.Code § 56.35(b)(1) when charges accrued as a result of theft of service on the part of the applicant. The record demonstrates that theft of gas at the service address began shortly after PGW terminated the service on October 22, 2004. Tr. 93-94; PGW Exh. 10. Moreover, PGW confirmed that there was theft occurring at the service address during a November 9, 2017 safety appointment check, during which a PGW technician discovered the Complainant's meter removed from the wall and a flex connector hose installed in its place, which would allow gas to flow freely to the Complainant's gas appliances. Tr. 65-66, 68-69; PGW Exh. 1. Additionally, the technician discovered that the "wing lock" on the gas pipe at the service address had been pried up to allow the gas to be turned on. Tr. 67-68.

Although PGW was able to establish that there was theft of service at the service address shortly after service was terminated in October 2004, PGW was not able to establish that the Complainant was responsible for the theft since 2004. The record shows that the Complainant neither owned nor resided at the service address prior to January 24, 2007. Although the Complainant was present during the October 22, 2004, site visit to allow PGW personnel into the address, I cannot conclude that his mere presence at the service address on that date is sufficient to attach financial responsibility to him for theft of service charges from that date forward.

The record shows that the Complainant purchased the service address on January 24, 2007. Complainant disputes his responsibility for unauthorized usage charges occurring prior to 2013 on the grounds that, although he owned the property, he was not living there. However, a property owner having dominion and control over a service address is responsible to have known, or should have known, of tampering and theft of service occurring at

the property. *Akeem Simmons, Yvonne Whisenant and Ashley Mowery v. UGI Utilities, Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018).

In the present case, the Complainant did not offer anything to show that he lacked dominion and control over the service address after he purchased the property on January 24, 2007. The Complainant purchased the service address and allowed the existing tenant, Ms. Diaz, to continue residing there. Moreover, although the Complainant was incarcerated from September 19, 2007 until February 2, 2012 and residing in a half-way house between February 2, 2012 and July 2, 2012, the record demonstrates that the Complainant continued to permit Ms. Diaz to have access to, and live at, the service address. The record further demonstrates that Ms. Diaz remained at the service address for an unspecified period following the Complainant's release. Although the Complainant ultimately evicted Ms. Diaz for failing to pay rent, he did not offer anything to show that he lacked dominion and control over the service address during the period she resided there. Accordingly, PGW may hold the Complainant financially responsible for the unauthorized usage charges that occurred at the service address following his purchase of the property on January 24, 2007 through termination on June 4, 2014, based on the capacity of the appliances connected to the gas line and the number of degree days during this period.

CONCLUSIONS OF LAW

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

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

3. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years from the date of the service request. The 4-year limit does not apply if the balance includes amounts that the utility was not aware of because of fraud or theft on the part of the applicant. 52 Pa.Code § 56.35(b)(1).

5. A property owner having dominion and control over a service address is responsible to have known, or should have known, of tampering and theft of service occurring at the property. *Akeem Simmons, Yvonne Whisenant and Ashley Mowery v. UGI Utilities, Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018).

6. PGW may hold the Complainant, the property owner, responsible for unauthorized usage charges that accrued at the service address between January 24, 2007 and June 4, 2014.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Victor Ruffin against Philadelphia Gas Works at Docket No. F-2018-2646481 is sustained in part and denied in part;

2. That the Complaint is sustained in that the Complainant is not responsible for unauthorized gas usage that occurred at the service address between October 22, 2004 and January 23, 2007;

