

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joacquin Scott	:	
	:	
v.	:	F-2018-3001138
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies Joacquin Scott’s formal Complaint against Philadelphia Gas Works at Docket No. F-2018-3001138 because he failed to carry his burden of proving by a preponderance of the evidence that Philadelphia Gas Works is improperly holding him responsible for the unauthorized use of gas at the Service Address during the period December 1, 2001 – September 25, 2017.

**HISTORY OF THE PROCEEDING**

On March 30, 2018, Joacquin Scott (Complainant or Mr. Scott) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the Respondent is improperly holding him responsible for unauthorized usage of gas at a property that he leased to tenants for several years. As relief, Mr. Scott requested that the Commission order PGW to rescind the gas bill issued to him for unmetered gas usage at that property.

This formal Complaint is a timely appeal of a decision issued by the Commission's Bureau of Consumer Services at BCS Case No. 3574469.

On May 7, 2018, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated May 18, 2018, notified the parties that the case was scheduled to take place as part of the morning session of a call-of-the-docket (CTD) hearing on Thursday, June 14, 2018, at 9:30 a.m.

A Prehearing Order was issued on May 24, 2018, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

Upon closer review, it was determined that this case was not a good candidate for a CTD hearing where several cases are scheduled at the same time in the same hearing room. A Hearing Cancellation/Reschedule Notice informed the parties that the in-person hearing was rescheduled for Friday, July 20, 2018.

A second Prehearing Order was issued on June 26, 2018, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on July 20, 2018. Joaquin Scott appeared *pro se* and testified in support of the Complaint. Mr. Scott sponsored three exhibits, which were admitted into the record. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of David Baback, Nicolas Simeo, and Jessica Glace. The Respondent sponsored 10 exhibits, which were admitted into the record.

Prior to the conclusion of the hearing, I allowed the Complainant two weeks to submit as late-filed exhibits documentation substantiating his claims. The Respondent was

allowed an additional two weeks to file written objections to any late-file exhibit submitted by the Complainant.

As of the date of this Initial Decision, the Complainant has not submitted any documents as late-filed exhibits.

The record in this matter closed upon receipt of my copy of the transcript on August 24, 2018.

### FINDINGS OF FACT

1. The Complainant is Joacquin Scott who resides at 1817 North 27<sup>th</sup> Street, Philadelphia, PA 19121. Tr. 6.

2. Mr. Scott owns several properties including the property at 2709 W. Jefferson Street, Philadelphia, PA 19121 (Service Address). Tr. 6-7.

3. Mr. Scott has a Rental Business License issued by the City of Philadelphia on March 28, 2014. Tr. 7, Complainant Exhibit 3.

4. Mr. Scott is not enrolled in PGW's Landlord Cooperation Program. Tr. 14.

5. On August 8, 2000, PGW shut off gas service at the Service Address for non-payment. Tr. 45.

6. On August 8, 2000, PGW shut off gas service for the Service Address at the meter because there was no curb valve near the property. Tr. 45-46, PGW Exhibit 4.

7. Mr. Scott purchased the Service Address on December 1, 2001. Tr. 52, 59, PGW Exhibit 6.

8. On January 1, 2010, Mr. Scott rented the Service Address to Maurice S. Moore. Tr. 12.

9. Mr. Moore's lease with the Complainant did not specify the party responsible for gas service at the Service Address. Tr. 19, Complainant Exhibit 1.

10. Mr. Moore was the tenant at the Service Address until December 2013. Tr. 12-13, 15.

11. Annette Smith-Bey rented the Service Address from Mr. Scott from March 28, 2014 until September of 2017. Tr. 7-8, Complainant Exhibit 4.

12. Ms. Smith-Bey's lease indicated that she was responsible for gas service at the Service Address. Complainant Exhibit 4.

13. PGW did not have an active customer for the Service Address during the period August 8, 2000 to September 25, 2017. Tr. 46, 54-55.

14. On September 25, 2017, at 8:07 a.m., PGW received an unbilled usage tip concerning the Service Address from an anonymous source. Tr. 46-48, PGW Exhibit 5.

15. On September 25, 2017, at 8:23 a.m., a PGW field service technician, David Baback, visited the Service Address in order to investigate the unbilled usage tip. Tr. 29-31, 37, 49.

16. At the time of his arrival at the Service Address, Mr. Baback was denied entry into the property by a woman who asked him to return later because the landlord was not available at that time. Tr. 37-38, 39.

17. At 8:29 a.m. on September 25, 2017, Mr. Scott contacted PGW requesting gas service at the Service Address. Tr. 53-54, PGW Exhibit 7.

18. During the September 25, 2017 call, a PGW representative instructed Mr. Scott to submit a lease and two forms of identification. Tr. 53, PGW Exhibit 7.

19. Mr. Baback returned to the Service Address at 11:06 a.m. on September 25, 2017 and was able to gain access to the property. Tr. 38, 43.

20. While at the Service Address, Mr. Baback was unable to find the gas meter or any swivels on the meter bar. Tr. 31, 37, 40; PGW Exhibits 1 and 3.

21. While at the Service Address, Mr. Baback found that the meter valve was broken. Tr. 33, 37, 42, PGW Exhibit 3.

22. While at the Service Address, Mr. Baback used a gas detection device (GDI) and got a reading of 5 UELs (upper explosive limit) on the service line. Tr. 35, 41, PGW Exhibit 2.

23. Gas can ignite between 5 UELs and 15 UELs. Tr. 35.

24. A reading of 5 UELs indicates that there is enough gas in the pipe that it could potentially ignite. Tr. 35.

25. A reading of 5 UELs indicates that gas was flowing through the service line shortly before Mr. Baback's visit to the Service Address. Tr. 35, 42.

26. While at the Service Address, Mr. Baback found a 100,000 BTU gas house heater and a 56,000 BTU gas range. Both appliances were in working condition. Tr. 31-32, 36-37, 39, PGW Exhibit 3.

27. At the conclusion of his investigation, Mr. Baback securely shut off gas service at the Service Address with locking plugs and left a post-termination notice. Tr. 32, 37, PGW Exhibit 3.

28. On June 12, 2018, PGW charged Mr. Scott in the amount of \$19,759.46 for unauthorized usage of gas at the Service Address due to the theft. Tr. 55, PGW Exhibit 8.

29. PGW calculated the \$19,759.46 charge based on the BTUs of the two gas appliances found at the Service Address on September 25, 2017. Tr. 55, 58, PGW Exhibit 8.

30. The \$19,759.46 charge covered the period December 1, 2001 to September 25, 2017. Tr. 59, PGW Exhibit 8.

### DISCUSSION

In his formal Complaint, Mr. Scott alleged that PGW is improperly holding him responsible for unauthorized usage of gas at a property that he leased to tenants for several years. As relief, Mr. Scott requested that the Commission order PGW to rescind the gas bill issued to him for unmetered gas usage at that property.

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.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95, *vacated* on other grounds, 666 A.2d 744 (Pa.Cmwlth. 1995) (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa.

654, 602 A.2d 863 (1992). 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).

In addition, 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. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Joacquin Scott resides at 1817 North 27<sup>th</sup> Street, Philadelphia, PA 19121, but owns several properties including the Service Address. Tr. 6-7. Mr. Scott has a Rental Business License issued by the City of Philadelphia on March 28, 2014. Tr. 7, Complainant Exhibit 3. Mr. Scott is not enrolled in PGW's Landlord Cooperation Program. Tr. 14.

On August 8, 2000, PGW shut off gas service at Service Address for non-payment. Tr. 45. Because there was no curb valve near the property, PGW shut off gas service at the meter. Tr. 45-46, PGW Exhibit 4.

Mr. Scott purchased the Service Address on December 1, 2001. Tr. 52, 59, PGW Exhibit 6. On January 1, 2010, Mr. Scott rented the Service Address to Maurice S. Moore. Tr. 12. Mr. Moore was the tenant at the Service Address until December 2013. Tr. 12-13, 15. Mr. Moore's lease with the Complainant did not specify the party responsible for gas service at the Service Address. Tr. 19, Complainant Exhibit 1. Next, Mr. Scott rented the Service Address to Annette Smith-Bey. Tr. 8, Complainant Exhibit 4. Ms. Smith-Bey's lease indicated that she was responsible for gas service at the Service Address. Complainant Exhibit 4. Ms. Smith-Bey rented the Service Address from Mr. Scott from March 28, 2014 until September of 2017. Tr. 7-8, Complainant Exhibit 4.

On September 25, 2017, at 8:07 a.m., PGW received an unbilled usage tip concerning the Service Address from an anonymous source. Tr. 46-48, PGW Exhibit 5. At 8:23 a.m., a PGW field service technician, David Baback, visited the Service Address in order to investigate the unbilled usage tip. Tr. 29-31, 37, 49. At the time of his arrival at the Service Address, Mr. Baback was denied entry into the property by a woman who asked him to return later because the landlord was not available at that time. Tr. 37-38, 39.

At 8:29 a.m. on September 25, 2017, Mr. Scott contacted PGW requesting gas service at the Service Address. Tr. 53-54, PGW Exhibit 7. During the September 25, 2017 call, a PGW representative instructed Mr. Scott to submit a lease and two forms of identification. Tr. 53, PGW Exhibit 7.

Mr. Baback returned to the Service Address at 11:06 a.m. on September 25, 2017 and was able to gain access to the property. Tr. 38, 43. While at the Service Address, Mr. Baback was unable to find the gas meter or any swivels on the meter bar. Tr. 31, 37, 40; PGW Exhibits 1 and 3. In addition, he found that the meter valve was broken, and that gas had been flowing on the customer service line until recently. Tr. 33, 37, 42, PGW Exhibit 3.

In particular, Mr. Baback testified that he used a gas detection device and got a reading of 5 UELs on the customer service line. Tr. 35, 41, PGW Exhibit 2. He explained that gas can ignite between 5 UELs and 15 UELs. Tr. 35. A reading of 5 UELs indicates that there is enough gas in the pipe that it could potentially ignite. Tr. 35. According to Mr. Baback, a reading of 5 UELs indicates that gas was flowing through the service line shortly before Mr. Baback's visit to the Service Address. Tr. 35, 42. On the contrary, any remaining gas would have dissipated from the service line during the period of time since the service was shut off at the Service Address in August of 2000. Tr. 42.

During his September 25, 2017 investigation, Mr. Baback found a 100,000 BTU gas house heater and a 56,000 BTU gas range at the Service Address. Both appliances were in working condition. Tr. 31-32, 36-37, 39, PGW Exhibit 3. At the conclusion of his investigation,

Mr. Baback securely shut off gas service at the Service Address with locking plugs and left a post-termination notice. Tr. 32, 37, PGW Exhibit 3.

On June 12, 2018, PGW charged Mr. Scott in the amount of \$19,759.46 for unauthorized usage of gas at the Service Address due to the theft. Tr. 55, PGW Exhibit 8. PGW calculated the \$19,759.46 charge based on the BTUs of the two gas appliances found at the Service Address on September 25, 2017. Tr. 55, 58, PGW Exhibit 8. The \$19,759.46 charge covered the period December 1, 2001 to September 25, 2017. Tr. 59, PGW Exhibit 8.

At the hearing, the Respondent emphasized that it did not have an active customer for the Service Address during the period August 8, 2000 to September 25, 2017. Tr. 46, 54-55.

At the hearing, Mr. Scott did not deny that theft of service was perpetrated at the Service Address, but disputed PGW's finding that he was responsible for the unauthorized usage of gas. Tr. 7, 64. He pointed to the two tenants of the Service Address and to their leases, which assigned responsibility for gas service at the property. Tr. 19, Complainant Exhibits 1 and 4. In addition, he stated that the Service Address was unoccupied for a period of time, but he was unable to specify the length of time (Tr. 18) or whether a gas meter was at the Service Address at the time he purchased it, at the time he leased it to Mr. Moore, or at the time he leased the property to Ms. Smith-Bey (Tr. 25-29).

Section 1529.1 of the Public Utility Code, 66 Pa.C.S. § 1529.1, regarding the duties of owners of rental property, requires that utilities list accounts for individually-metered rental units in the name of the owner, absent a request for service by the tenant or other authorized representative. Section 1529.1 of the Code reads as follows:

**(a) Notice to public utility.** — It is the duty of every owner of a residential building or mobile home park which contains one or more dwelling units, not individually metered, to notify each public utility from whom utility service is received of their ownership and the fact that the premises served are used for rental purposes.

**(b) *History of account.*** — Upon receipt of the notice provided in this section, if the mobile home park 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. In the case of individually metered dwelling units, unless notified to the contrary by the tenant or an authorized representative, an affected public utility shall list the account for the premises in question in the name of the owner, and the owner shall be responsible for the payment for utility services to the premises.

**(c) *Failure to give notice.*** — Any owner of a residential building or mobile home park failing to notify affected public utilities as required by this section shall nonetheless be responsible for payment of the utility services as if the required notice had been given.

66 Pa.C.S. § 1529.1. (Emphasis added).

It is undisputed that the Service Address is owned by Mr. Scott as a rental property. Tr. 14. Despite being provided with additional time, the Complainant failed to submit any documentation substantiating his claim that the Service Address was unoccupied or uninhabitable during the period from December 1, 2001 to January 1, 2010, when the property was leased to Mr. Moore. No matter how honest and strong his assertions were, they cannot form a basis for a finding in his favor. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

In addition, Complainant produced two leases which confirm that the Service Address was rented by Complainant, as the landlord, to Maurice Moore and Annette Smith-Bey during the period January 1, 2010 to December 2013, and March 28, 2014 to September 2017, respectively. As stated above, Mr. Moore's lease does not specify the party responsible for gas service at the Service Address, whereas Ms. Smith-Bey's lease holds her responsible for paying gas service at the property. Nevertheless, these leases do not control liability to PGW for utility service. *See*, 66 Pa.C.S. § 1529.1. "The lease is a private contract as to how financial responsibility for utility service will be divided between a landlord and a tenant." *Andrews v.*

*PECO Energy Company*, Docket No. C-2012-2283978, at 12 (*see* Initial Decision issued December 24, 2012, Final Order entered January 25, 2013). The Commission does not have jurisdiction over private contractual matters. *Adams v. Pa. Pub. Util. Comm'n*, 819 A.2d 631 (Pa.Cmwlth. 2003). Complainant could pursue whatever remedies are available to him in local court for Mr. Moore's and Ms. Smith-Bey's alleged breach of contract. 66 Pa.C.S. § 103(c).

As the owner of the property in question, Mr. Scott knew or should have known that there were operational gas appliances at the Service Address, and consequently that the Service Address was connected to PGW's gas service. Yet, the record contains no indication that Mr. Scott notified PGW of his ownership of the Service Address or that the premises were used for rental purposes. On the contrary, Mr. Scott never contacted PGW regarding service at the Service Address prior to September 25, 2017. *See*, Tr. 54. In fact, PGW did not have an active customer for the Service Address during the entire period from August 8, 2000 to September 25, 2017. Tr. 46, 54-55.

In view of the above, I find that the Complainant has failed to carry his burden of proving by a preponderance of the evidence that the Respondent is improperly holding him responsible for theft of service charges assessed for the period December 1, 2001 to September 25, 2017.

#### CONCLUSIONS OF LAW

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

2. The Complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa. C.S.A. § 332(a).

3. 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. Pub. Util. Comm’n*, 489 Pa. 109, 413 A.2d 1037 (1980).

4. Section 1529.1 of the Public Utility Code requires that utilities list accounts for individually-metered rental units in the name of the owner, absent a request for service by the tenant or other authorized representative. 66 Pa.C.S. § 1529.1

5. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987).

6. A residential lease between a landlord and tenant is a private contract and the Commission does not have jurisdiction over contractual matters. *Adams v. Pa. Pub. Util. Comm’n*, 819 A.2d 631 (Pa.Cmwlth. 2003).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Joaquin Scott against Philadelphia Gas Works at Docket No. F-2018-3001138 is denied.

2. That the Secretary’s Bureau mark this matter closed.

Date: November 16, 2018

\_\_\_\_\_/s/  
Eranda Vero  
Administrative Law Judge