

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jermaine Coston	:	
	:	
v.	:	C-2018-2643871
	:	
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 April 10, 2014 and January 30, 2017. The Complaint is denied in that the Complainant is responsible for unauthorized gas usage that occurred at the service address between January 31, 2017 and June 14, 2017. The Complaint is also denied in that the Complainant is not eligible to receive a Commission-issued payment arrangement on the amount for which he is financially responsible.

**HISTORY OF THE PROCEEDING**

On January 22, 2018, Jermaine Coston (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 checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.” Under the “requested relief” section, the Complainant indicated that he was incarcerated during a period when someone else illegally

restored gas service at 1449 South 53<sup>rd</sup> Street (service address). Complainant maintained that he should not be held responsible for the balance that accrued after the gas was illegally restored.

On February 12, 2018, Respondent filed an Answer admitting that it terminated service at the service address. Respondent further indicated: that on August 16, 2013, the Complainant visited PGW's office to request gas service at the service address; that on August 18, 2013, PGW turned the gas service on; that on April 10, 2014, PGW shut off the Complainant's service at the curb for non-payment; that city records show that Theresa Coston (Complainant's mother) has been the property owner since May 2, 2014; that on October 30, 2014, a PGW technician found gas on at the curb and left a 72-hour notice at the property; that on June 14, 2017, PGW again found the gas on during a curb value safety re-check; that on that same date, a PGW technician discovered a tampered meter bypass with the ERT head hanging off; and that PGW removed the meter and shut the gas off with locking devices and curbed with an expander. On June 27, 2017, PGW billed the Complainant for bypass charges of \$6,187.63 from April 10, 2014 to June 14, 2017. PGW indicated that this calculation was based on historical usage.

By Hearing Notice dated February 15, 2018, a hearing was scheduled for April 9, 2018 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on February 22, 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.

The hearing convened as scheduled on April 9, 2018. The Complainant appeared *pro se*. The Respondent appeared and was represented by Laureto Farinas, Esq., who was accompanied by two potential witnesses.

Following a brief recess taken to allow the parties an opportunity to discuss the possibility of settlement, the Complainant requested a continuance to obtain an attorney to represent him in this matter. Mr. Farinas did not object to the Complainant's request. I granted the

Complainant's request and informed him that the case would be relisted far enough out on the calendar to ensure he had sufficient time to seek legal representation.

By Hearing Notice dated July 25, 2018, the hearing was rescheduled for September 4, 2018 at 10:00 a.m.

The hearing reconvened as scheduled on September 4, 2018. Complainant again appeared *pro se* and testified. Complainant offered one exhibit during the hearing which was admitted into the record. The Respondent appeared and was again represented by Mr. Farinas, who presented the testimony of Jessica Glace, a PGW Senior Customer Review Officer, and Jonathan Duer, a PGW Service Technician. The Respondent offered five exhibits during the hearing which were all admitted into the record.

I informed the Complainant during the hearing that he had until the close of business on September 21, 2018 to submit a late exhibit.<sup>1</sup> I also informed Mr. Farinas that he would have until the close of business on September 28, 2018, to object to the admissibility of the Complainant's proposed late exhibit.<sup>2</sup>

The Complainant did not submit his proposed exhibit, a letter from a Parole Agent with the Pennsylvania Board of Probation and Parole, until September 27, 2018, six days after the deadline established during the hearing for submission. However, Mr. Farinas informed me on October 1, 2018, that PGW does not object to the admission into the record of the Complainant's late exhibit. Although the Complainant did not meet the deadline for submission, because the record was still open at that time, and because Respondent had no objection, the Complainant's late exhibit (C-2) will be admitted into the record of this proceeding through this initial decision.

The record in this case consists of 103 pages of transcribed testimony and seven exhibits. The record closed on November 1, 2018, when I received the transcript of the September 4, 2018 hearing.

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<sup>1</sup> Tr. 26.

<sup>2</sup> *Id.*

## FINDINGS OF FACT

1. The Complainant in this case is Jermaine Coston.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant resides at 1449 South 53<sup>rd</sup> Street, Philadelphia, PA 19143 (service address). Tr. 17.
4. There is a gas house heater, a gas range and a gas water heater at the service address. Tr. 21, 32, 92, 96; PGW Exh. 3.
5. The Complainant's mother, Theresa Coston, owns the service address, having inherited the property from her mother in 2011. Tr. 17, 19, 54.
6. The Complainant previously had gas service in his name at the service address from August 18, 2013 through April 10, 2014. Tr. 19, 69-70; PGW Exh. 1.
7. Between August 18, 2013 and October 26, 2013, the Complainant resided at the service address with his brother and their respective girlfriends. Tr. 20.
8. The Complainant was incarcerated from October 26, 2013 until June 27, 2016, from July 1, 2016 until January 31, 2017, and again from June 30, 2017 until December 19, 2017. Tr. 18-19, 27; Complainant's Exhs. 1 & 2.
9. On April 10, 2014, PGW terminated the Complainant's service for non-payment. Tr. 18, 70-71, 75-76, 81; PGW Exhs. 1 & 2.
10. At the time of termination, there was an unpaid balance of \$998.19 on the Complainant's account for service at the service address. Tr. 75; PGW Exh. 2.

11. On an unspecified date after the Complainant's incarceration, the Complainant's mother and father moved into the service address. The other tenants were still residing there at this time. Tr. 32, 44, 58.

12. The gas was on at the service address when the Complainant's parents moved in. Tr. 45, 49.

13. On an unspecified date after she moved into the service address, the Complainant's mother evicted the remaining tenants from the service address. Tr. 44, 47.

14. The goal of a PGW "Cold Weather Survey" is to assist customers whose service has been terminated in getting their gas service restored. Tr. 85.

15. On October 30, 2014, a PGW representative visited the service address on a Cold Weather Survey, at which time the representative found that the gas had been turned back on. Tr. 71, 81; PGW Exh. 1.

16. The PGW representative left the gas on and also left a 72-hour termination notice. Tr. 71; PGW Exh. 1.

17. The Complainant returned to the service address upon his release from Prison in January 2017 to live with his mother and father. Tr. 34.

18. When the Complainant returned to the service address in January 2017, he discovered that the gas was on and had been illegally restored. Tr. 33, 36, 43.

19. On June 14, 2017, PGW service technician Jonathan Duer was at the service address on an unbilled usage investigation. Tr. 76; PGW Exh. 3.

20. Mr. Duer found the gas on at the service address. Tr. 90; PGW Exh. 3.

21. An ERT head is a device on the front of a gas meter that contains a “wiggler” that spins, counting the cubic feet of gas passing through the meter. Tr. 93.

22. Mr. Duer found the ERT head hanging off of the meter at the service address. Tr. 92; PGW Exh. 3.

23. The ERT head had been pried open so that the “wiggler” couldn’t count the cubic feet of gas passing through the meter. Tr. 93.

24. Mr. Duer removed the meter and installed locking plugs to prevent further tampering. Tr. 90-91; PGW Exh. 3.

25. Mr. Duer also shut the gas off at the curb with an expander, which is a locking device used to prevent further access to the curb valve. Tr. 91; PGW Exh. 3.

26. While at the service address on June 14, 2017, Mr. Duer observed that the gas house heater, the gas water heater, and the gas range were operational and connected to the gas line. Tr. 96; PGW Exh. 3.

27. On June 22, 2017, the Complainant contacted PGW to request gas service. PGW Exh. 1.

28. On or about June 27, 2017, PGW billed the Complainant \$6,187.63 for unauthorized usage that occurred between April 10, 2014 and June 14, 2017. These charges were calculated based upon historical usage at the service address between July 24, 2012 and June 21, 2013, and the total number of degree days during the unauthorized usage period. Tr. 76-78; PGW Exh. 4.

## 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 Unauthorized Usage Charges**

The Complainant has challenged his responsibility for the balance that accrued at the service address after the gas was illegally restored. 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 define the term “applicant” as “[a] natural person at least 18 years of age not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested.” 52 Pa.Code § 56.2. Commission regulations further provide that the term “applicant” “does not include a person who seeks to transfer service within the service territory of the same public utility or to reinstate service at the same address provided that the final bill for service is not past due.” *Id.* Although the Complainant seeks to restore service at the service address, since his last bill was issued in 2014 and is clearly past due, he meets the definition of “applicant” in this case.

PGW seeks to hold the Complainant financially responsible for unauthorized usage that occurred between April 10, 2014 and June 14, 2017. However, the record demonstrates that the Complainant was incarcerated when PGW disconnected his gas service and was still incarcerated when PGW first discovered evidence of theft at the service address on October 30, 2014. The record further demonstrates that, during the period of unauthorized usage

between April 10, 2014 and June 14, 2017, the Complainant only benefitted from the unauthorized service from January 31, 2017, the date he returned from his incarceration, until PGW finally terminated service on June 14, 2017. Pursuant to Commission regulations, PGW is only permitted to hold the Complainant, an applicant for service, responsible for payment of the outstanding balance that accumulated while he resided at the service address. 52 Pa.Code § 56.35(b)(1). Accordingly, PGW may only hold the Complainant responsible for unauthorized usage charges that accrued between January 31, 2017 and June 14, 2017. For the remaining unauthorized usage balance that accrued prior to the Complainant's return to the service address, PGW will have to seek payment from those who resided there during that period and benefitted from the unauthorized usage.

### **Request for Commission-Issued Payment Arrangement**

The Complainant has requested a Commission-issued payment arrangement. However, since this balance is the result of theft of service, the Complainant is not eligible for a payment arrangement in this matter. In *Darnell Fassett v. Philadelphia Gas Works*, F-2014-2408541, (Opinion and Order entered April 27, 2015), the Commission stated the following: “[w]e do not believe a payment arrangement is appropriate when the person requesting the arrangement was involved in a theft of utility service while residing at the service location.”<sup>3</sup> The Commission decided that Mr. Fassett should not receive a Commission-ordered payment arrangement because he resided at the property while the unauthorized gas usage occurred. Accordingly, since the Complainant was residing at the service address during a period when unauthorized usage occurred, and was aware that the gas service had been illegally restored,<sup>4</sup> he is not eligible for a Commission-issued payment arrangement on the balance for which he is financially responsible.

### CONCLUSIONS OF LAW

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

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<sup>3</sup> Order at 8.

<sup>4</sup> Tr. 33, 36, 43.

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. PGW may only hold the Complainant responsible for unauthorized usage charges that accrued at the service address between January 31, 2017 and June 14, 2017.

6. A person is not eligible for a payment arrangement where the person requesting the arrangement was involved in theft of utility service. *Darnell Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541, (Opinion and Order entered April 27, 2015).

7. The Complainant is not eligible to receive a Commission-issued payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That Complainant's Exhibit 2 is admitted into the record of this proceeding;
2. That the Complaint of Jermaine Coston against Philadelphia Gas Works at Docket No. C-2018-2643871 is sustained in part and denied in part;
3. That the Complaint is sustained in that the Complainant is not responsible for unauthorized gas usage that occurred at the service address between April 10, 2014 and January 30, 2017;
4. That the Complaint is denied in that the Complainant is responsible for unauthorized usage that occurred at the service address between January 31, 2017 and June 14, 2017;
5. That Philadelphia Gas Works shall issue a bill to the Complainant for usage that occurred at the service address between January 31, 2017 and June 14, 2017 based on the capacity of the appliances connected to the gas line and the number of degree days during this period;
6. That the Complaint is denied in that the Complainant is not eligible to receive a Commission-issued payment arrangement on the amount for which he is financially responsible; and

