

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Henry Yang	:	
	:	
v.	:	F-2017-2635567
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This decision finds that the Complainant failed to sustain his burden of proof regarding inadequate service by the public utility at the service address, and therefore, this decision denies the formal Complaint (Complaint).

HISTORY OF THE PROCEEDING

On November 20, 2017, Henry Yang (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (PUC or Commission) against the Philadelphia Gas Works (PGW or Respondent or Company). The Complainant requested restoration of gas service and installation of a gas meter at 5428 Howland Street, Philadelphia, Pennsylvania (service address). The Complaint is a timely appeal of an informal complaint filed with the Commission's Bureau of Consumer Services (BCS) at Case No. 3571365.

The Complaint was served electronically (eService) by the Commission's Secretary on November 27, 2017, per the audit history of the docket. The eService is pursuant to

the Waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

Counsel for the Respondent, Graciela Christlieb, Esquire, filed an Answer and New Matter on December 19, 2017. The Answer denied that the Respondent terminated service at the service address. The New Matter asserted that the Complainant was not the customer of record and therefore did not have standing to bring the dispute before the Commission.

Also, on December 19, 2017, but by separate document, the Respondent filed a Motion for Summary Judgment (Motion) and a Notice to Plead. The Motion asserted that Bao Chen is the tenant of the Complainant and the customer of record for gas service at the service address. The Motion contended that the Complainant lacked standing to bring the Complainant on behalf of Mr. Chen.

By letter dated January 9, 2018, the Complainant responded to the Respondent's New Matter. In the letter the Complainant implied that he is the customer of record and then repeats his dispute adding that there is no other occupant at the residence.

A Motion Judge Assignment Notice dated January 26, 2018, assigned the Complaint to Administrative Law Judge (ALJ), Dennis J. Buckley.

By Order dated March 9, 2018, ALJ Buckley concluded that facts in dispute existed, such as whether the gas service has been disconnected and whether the gas meter has been removed at the service address. Thus, the Motion was denied and the matter was directed to be set for hearing.

By Hearing Notice dated March 12, 2018, this dispute was scheduled for an initial telephonic hearing for Thursday, April 19, 2018 with ALJ Buckley presiding.

By Corrected Hearing Notice dated April 6, 2018, this matter was scheduled as an initial in-person hearing for Monday, June 11, 2018, and was assigned to ALJ Angela T. Jones.

By Prehearing Order also dated April 6, 2018, the undersigned confirmed the date of the scheduled hearing and provided procedural rules for the hearing.

The initial in-person hearing convened as scheduled. The Complainant was present and represented himself. The Complainant was accompanied by one potential witness. The Respondent was present and was represented by Attorney Christlieb. The Respondent was accompanied by two potential witnesses. After some discussion, it was agreed that the Complainant would not be billed for service at the service address, the meter would be installed, and service would be restored. As the agreement resolved the Complaint as filed, the Complainant was given the opportunity to amend his Complaint to incorporate inadequate service to the service address as an issue for dispute. This initial hearing generated a transcript of 46 pages.

The Complainant amended his dispute to include inadequate service for difficulty in placing service in the Complainant's name and a further hearing was to be scheduled. By Hearing Notice dated July 24, 2018, a further in-person hearing was scheduled for August 27, 2018, at 10:00 a.m.

On August 8, 2018, the Respondent filed a motion for continuance (Motion II) because Attorney Christlieb was unavailable on the date of August 27, 2018, and therefore, requested that the further hearing be rescheduled. Motion II represented that the Complainant had no objection to the request to reschedule the further hearing.

By Order dated August 9, 2018, Motion II was granted.

By Hearing Notice dated August 10, 2018, a further in-person hearing was scheduled for September 27, 2018, at 10:00 a.m.

The evidentiary hearing for September 27, 2018, convened as scheduled. The Complainant was present. The Complainant testified and presented Yan K. Yeung, his father, as a witness. The Complainant provided two exhibits—an invoice for an installed boiler and

pictures of the boiler installed at the service address. Both exhibits were admitted into the record.

The Respondent presented two witnesses—Jessica Glace, a PGW Customer Review Officer; and Maureen Horan, a Supervisor of the PGW Customer Service Center. The Respondent offered the following three exhibits:

- (1) customer contacts from the service address—PGW Exhibit 1;
- (2) the BCS Case No. 3571365 informal complaint—PGW Exhibit 2; and
- (3) customer service history for the service address—PGW Exhibit 3.

All three exhibits were admitted into the record without objection.

There were 132 pages of transcribed testimony from the further hearing on September 27, 2018, and therefore, the complete transcript consisted of 178 pages.¹ The complete transcript was received on November 1, 2018, and the record closed when the transcript was received.

This matter is now ripe for decision.

FINDINGS OF FACT

1. The Complainant is Henry Yang who lives at 13 Park Street, Little Ferry, New Jersey. TrB. 15, 54.
2. The Complainant has been the owner and landlord of 5428 Howland Street, Philadelphia, Pennsylvania (service address) since 2006. TrB. 16, 54.
3. The Respondent is Philadelphia Gas Works, a gas distribution utility company with the service territory of Philadelphia, Pennsylvania.

¹ The transcript has two dates, June 11, 2018 (TrA) and September 27, 2018 (TrB). There were 46 pages of testimony from the initial hearing on June 11, 2018, (132 pages + 46 pages = 178 pages).

4. The Respondent provides gas heat service to the service address. Tr. 16.
5. The Complainant, as the landlord, was responsible for providing heat to the service address. TrB. 30.
6. The Respondent put service in the Complainant's name on June 11, 2018, which made the Complainant the customer of record for the service address. TrB. 16, 60.
7. Prior to June 11, 2018, the Complainant has never had gas service in his name at the service address. TrB. 55.
8. In October 2017, the Complainant's tenant, Bao Chen, was the Respondent's customer of record at the service address. TrB. 17, 78.
9. Mr. Chen left the service address before 2010. TrB. 20, 24-25.
10. The Complainant attempted to cancel the tenant's gas service account but ran into difficulty because the Respondent needed the tenant to authorize the cancellation of his account. TrB. 22-23.
11. The Complainant has called the Respondent and identified himself to the Respondent as Mr. Bao Chen to interact with PGW regarding gas service at the service address. TrB. 55.
12. The Complainant paid for the account under the name of his tenant, Bao Chen. TrB. 22, 24-25.
13. In October 2017, the Respondent contacted who they thought was the Complainant's tenant, Mr. Bao Chen, to check the meter. TrB. 25-26, 78, PGW Exhibit 1.
14. The Complainant granted the Respondent access to the meter. TrB. 26.

15. On October 13, 2017, the Respondent removed the meter and terminated service to the service address because meter tampering was found. TrB. 26-29, 78, PGW Exhibit 1.

16. On October 13, 2017, the Respondent received a telephone call from someone identifying himself as Mr. Bao Chen who asked that the gas meter be installed, and the gas service be restored. TrB. 76-77, PGW Exhibit 1.

17. The Complainant contacted the Respondent after the meter was removed from the service address several times and admitted he identified himself as Mr. Bao Chen for purposes of discussing the gas service at the service address. TrB. 55, 57-60, 79, PGW Exhibit 1.

18. The Complainant's tenant, Mr. Bao Chen, was sent a letter from the Respondent stating that the Company found meter tampering at the service address and that \$2,217.25 is to be paid to have service restored. TrB. 31-32, 56, PGW Exhibit 1.

19. The amount Mr. Bao Chen owed for gas usage was itemized as:

- a. Calculation of usage for theft of service -- \$1,825.95
- b. Account balance due -- \$140.07
- c. Reconnection fee -- \$123.23
- d. Security deposit -- \$128.00
- e. Total amount due -- \$2,217.25

PGW Exhibits 1, 2.

20. On October 13, 2017, a caller that identified himself as Mr. Bao Chen contacted the Respondent and requested to speak with a supervisor and was informed he would receive a callback prior to 6 p.m. that day. TrB. 110, PGW Exhibit 3.

21. The caller on October 13, 2017, received a callback from the Respondent at 5:31 p.m. and again requested to speak with a supervisor. TrB. 111, PGW Exhibit 3.

22. The supervisor called the person that was identified as the customer of record back at about 10 a.m. on October 16, 2017. Tr. 112-13, PGW Exhibit 3.

23. During the telephone call on October 16, 2017, at 10 a.m., a supervisor of the Respondent provided contact information so she could be contacted directly. TrB. 112.

24. During the telephone call with Respondent's supervisor on October 16, 2017, at about 1:58 p.m., the Complainant revealed that he had in the past contacted the Company and would identify himself as Mr. Bao Chen. TrB. 81, 113-14, PGW Exhibit 1.

25. On October 16, 2017, the Respondent directed the Complainant to come to its district office with identification and proof of ownership of the property to establish an account for the service address in his name. TrB. 100-01, 115-18 PGW Exhibits 1, 3.

26. On October 16, 2017, at 5:49 p.m., the Complainant called the Respondent back requesting the telephone number for the Commission and stated that he could not come into the district office that day with proof. TrB. 117, PGW Exhibit 3.

27. Telephone calls to the Respondent on October 17, and 19, 2017, all identified Mr. Bao Chen, the customer of record, as the person that called. TrB. 81-82, PGW Exhibit 1.

28. The last telephone call to the Respondent about restoring service to the service address was on October 19, 2017. TrB. 82, PGW Exhibit 1.

29. No one visited the Respondent's district office to obtain service for the service address prior to June 11, 2018. TrB. 82, PGW Exhibit 1.

30. Restoration of gas service at the service address for Mr. Bao Chen required payment for the bypass of gas service, a reconnection fee and possibly a security deposit. TrB. 83.

31. It was communicated by the Respondent to any person representing himself as Mr. Bao Chen that all charges and fees needed to be paid before service could be restored for Mr. Bao Chen at the service address. TrB. 83.

32. The Respondent did not find the Complainant responsible for the theft of gas service at the service address. TrB. 83.

33. The afternoon telephone call on October 16, 2017, was the first instance that the Respondent was aware that the Complainant was identifying himself as Mr. Bao Chen to the Respondent. TrB. 84.

34. After termination of gas service on October 13, 2017, the Complainant arranged for propane gas as an alternative source of heat for the service address. TrB. 32-34, Complainant Exhibits 1 and 2.

35. Jessica Glace is a Senior Customer Review Investigator employed by the Respondent, and she investigated this matter. TrB. 72-73.

36. Ms. Glace has worked with the Company as a call center representative and a quality assurance representative. TrB. 72-73, 77.

37. A person in the Respondent's call center confirms through a verifying process who they are speaking with and whether it is the customer of record. TrB. 78.

38. On October 18, 2017, Mr. Bao Chen filed an informal complaint with BCS at Case No. 3571365 for the service address, and his mailing address was 13 Park Street, Little Ferry, New Jersey 07643. TrB. 86, PGW Exhibit 2.

39. The Complainant of the BCS Case No. 3571365 complained about being charged by the Respondent for theft of service and that he is the owner of the service address but does not live there. TrB. 87, PGW Exhibit 2.

40. The response of the Respondent to BCS Case No. 3571365 was that Mr. Bao Chen had to pay a sum of \$2,217.25 to restore service at the service address. TrB. 87, PGW Exhibit 2.

41. There is no informal complaint made by the Complainant against the Respondent at the service address. TrB. 88.

42. The Respondent's policy is not to discuss details of the customer accountholder, for example Bao Chen, with someone other than Bao Chen, even if the person inquiring is the owner of the service address. TrB. 89-90.

43. To discuss the specifics of an account with the Respondent, the Respondent must first verify that it is speaking with the accountholder. TrB. 90.

44. On June 11, 2018, the Complainant became the customer of record for the service address in the Respondent's records. TrB. 100, PGW Exhibit 1.

45. Maureen Horan is a quality assurance analyst employed by the Respondent. TrB. 105.

46. Maureen Horan was previously employed by the Respondent as a call service supervisor, which was her job from January 2017 through March 2018. Tr.B 105.

DISCUSSION

I. Applicable Legal Standard

As the proponent of a rule or order seeking affirmative relief from the Commission, 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. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in

the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa.Cmwlth. 1992).

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*, 413 A.2d 1037 (Pa.Cmwlth. 1980).

If the Complainant presents 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*, 461 A.2d 1234 (Pa. 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).

II. Whether Complainant Sustained His Burden of Proof

There is no dispute that the Complainant is the owner of the service address. TrB. 16, 54. There is no dispute that the Complainant identified himself to the Respondent as Mr. Bao Chen, who was the tenant at the service address and customer of record for the service address until June 11, 2018. TrB. 55, 57-60, PGW Exhibit 1. The Complainant disputes whether he received reasonable service because the Respondent terminated service during the winter months causing him to reconfigure his heating system for the service address. The Complainant amended his Complaint to dispute whether the Respondent provided reasonable and adequate service to the Complainant at the service address in compliance with Section 1501 of the Code. 66 Pa.C.S. § 1501.

52 Pa.Code § 56.98(a) states,

§ 56.98. Immediate termination for unauthorized use, fraud, tampering or tariff violations.

(a) A public utility may immediately terminate service for any of the following actions by the customer:

(1) Unauthorized use of the utility service delivered on or about the affected dwelling.

(2) Fraud or material misrepresentation of identity for the purpose of obtaining utility service.

(3) Tampering with meters or other utility equipment.

(4) Violating tariff provisions on file with the Commission which endanger the safety of a person or the integrity of the public utility's delivery system.

On October 13, 2017, the Respondent gained access to the service address, saw that the meter had been tampered with, and therefore, terminated gas service and removed the gas meter. TrB. 26-29, 78, PGW Exhibit 1. Based on the record evidence, pursuant to 52 Pa.Code § 56.98(a)(3), the Respondent was authorized to terminate service.

The Respondent determined that Mr. Bao Chen, the customer of record and tenant at the service address, was responsible for theft of gas service at the service address. TrB. 115.

Based on the determination that Mr. Chen was responsible for theft of service, the Respondent concluded that Mr. Chen owed a grand total of \$2,217.25—itemized as:

(1)	usage --	\$140.07;
(2)	theft of service charges --	\$1,825.95;
(3)	security deposit --	\$128.00; and
(4)	<u>reconnection fees --</u>	<u>\$123.23</u>
	Grand total	\$2,217.25

PGW Exhibits 1, 2. The Respondent did not hold the Complainant responsible for the theft of gas service at the service address. TrB. 83.

When the Respondent discovered that the Company was speaking with the Complainant rather than Mr. Chen, the Respondent requested that the Complainant provide identification and proof of ownership of the service address. TrB. 100-01, 115-18, PGW Exhibits 1, 3. Complainant did not provide proof of ownership and identification to the Respondent until June 11, 2018. PGW Exhibit 1. When the Respondent obtained proof of ownership and identification of the Complainant, the Respondent put service in the name of the Complainant at the service address. TrB. 100, PGW Exhibit 1.

I believe there was no meeting of the minds in the communications between the Complainant and the Respondent. The Respondent followed its procedure for service restoration at the service address which reflected the Respondent's obligation to maintain reasonable and adequate service for the safety of the public.

The Respondent communicated that it could not provide information about the service at the service address if it was not speaking with the accountholder. The Complainant interpreted this information to mean that he had to represent himself as the current accountholder, Mr. Bao Chen, in order to address the lack of gas service at the service address. The Complainant demonstrated some frustration that he could not get any information about gas service to the service address unless he represented that he was the current accountholder for gas service at the service address. TrB. 20-25, 90-93. Because the Complainant consistently represented himself as Mr. Bao Chen until October 16, 2017, he received information that

\$2,217.25 was owed for gas service. Once the Complainant identified himself as Mr. Yang and not Mr. Chen, the response from the Respondent changed to requesting documents for verification of his identity.

I find that the Complainant took literally that he would need to provide verification of his identity and ownership of the service address that day, rather than that whenever he provided the information, the Respondent could then address his request as a new customer at the service address. There is no question that it is an inconvenience to come to a Center City Philadelphia office when one lives in New Jersey and works in New York City, as the Complainant does. TrB. 15, 120. However, there is nothing in the record evidence to conclude that the Respondent was communicating to the Complainant that the Company was willing to receive the verifiable documents from the Complainant on that day only. Here again, there was no meeting of the minds with what was communicated between the Complainant and the Respondent.

It is apparent to this presiding officer that if the communications between the Respondent and the Complainant were fully understood, the Complaint may have been avoided. I do not find that the conduct of the Respondent violated any rule, regulation statute or case law enforced by the Commission. Rather, I find that the Respondent needed to ensure that it provided the appropriate information to whomever identified himself as inquiring about the gas service at the service address.

I find that the false identification of who the Respondent was communicating with yielded the delay in the Complainant having service restored to his property. I find that any consequence the Complainant may have suffered in not obtaining service at the service address timely is due to the Complainant's false identification to the Respondent. Consequently, I find that the Respondent provided reasonable and adequate service to the Complainant.

III. Conclusion

The Complainant failed to support his burden of proof. The Complaint will be dismissed by the ordering paragraphs below.

CONCLUSIONS OF LAW

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

2. “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, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. A public utility is authorized to terminate service if it finds unauthorized use of the utility service delivered on or about the affected dwelling. 52 Pa.Code § 59.98(a)(3).

4. The Complainant had the burden of proof and failed to sustain his burden of proof.

5. The Respondent furnished and maintained adequate and reasonable service necessary for the accommodation, convenience, and safety of its patrons, employees, and the public. 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Henry Yang against Philadelphia Gas Works at Docket No. F-2017-2635567 is dismissed.
2. That the Secretary's Bureau mark this docket closed.

Date: January 10, 2019

/s/

Angela T. Jones
Administrative Law Judge