

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Bernard, Jr.	:	
	:	
v.	:	F-2018-3004013
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s formal Complaint because the Complainant failed to meet his burden of proving that the Respondent erred in holding him responsible for charges at a prior address for the time period from December 2017 to April 2018. The Complainant did not establish that the Respondent violated the Public Utility Code, or a Commission regulation or Order regarding its actions in this matter.

HISTORY OF THE PROCEEDING

On July 25, 2018, Michael Bernard, Jr. (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant contends that there were incorrect charges on his bill and requests an adjustment to his billing.

This matter is an appeal of a decision issued on June 23, 2018, by the Bureau of Consumer Services (BCS) at Case No. 3610376 which dismissed the informal complaint of the Complainant.

On September 4, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated September 12, 2018, an initial hearing was scheduled for Tuesday, October 23, 2018, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on September 27, 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 October 12, 2018, via a Call-In Telephone Hearing Notice, the matter was rescheduled for an initial hearing on Thursday, November 8, 2018, at 10:00 a.m.¹

The hearing convened as scheduled on November 8, 2018. Complainant participated *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Joyshalyn Moore. Respondent offered three exhibits, which were all entered into the record. At the end of the hearing, I requested that the Complainant provide a copy of his lease as a late filed exhibit. I gave the Complainant until November 21, 2018, to provide copies to myself and counsel for PGW. Tr. 36. I gave counsel for PGW until December 3, 2018, to file any written objections to the exhibit. Tr. 36.²

The hearing resulted in a 39-page transcript. The record closed on December 6, 2018, when I received the transcript of the hearing.

¹ The matter was rescheduled due to a conflict in the presiding officer's schedule.

² The Complainant did not provide a copy of his lease on or before November 21, 2018.

FINDINGS OF FACT

1. The Complainant in this case is Michael Bernard, Jr., who resides at 416 South Tenth Street, Marshall, Illinois, 62441. Tr. 9.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant previously resided at 3884 M Street, Second Floor Front Philadelphia, PA. Tr. 10.
4. The Complainant also resided at 3883 Glendale Street, Third Floor Rear, Philadelphia, PA. Tr. 10.
5. The Complainant had gas service with PGW at both Philadelphia addresses. Tr. 11.
6. The Complainant moved from Glendale Street to M Street in December 2017. Tr. 11.
7. In April 2018, the Complainant found out that service was still in his name at the Glendale Street address. Tr. 11.
8. The Complainant contacted PGW on April 18, 2018 and requested that service be terminated at the Glendale Street address. Tr. 24; PGW Exh. 1.
9. The Complainant was not billed for service at Glendale Street after April 18, 2018. Tr. 24; PGW Exh. 2.
10. The Complainant did not contact PGW before April 2018, regarding removing his name from the account at Glendale Street. Tr. 22; PGW Exh. 1.

11. The Complainant moved from the M Street address to Illinois in October 2018. Tr. 13.

12. The Complainant's total outstanding balance for the Glendale Street address is \$639.08. Tr. 32; PGW Exh. 2.

13. The Complainant's total outstanding balance for the M Street address is \$59.99. Tr. 32; PGW Exh. 2.

14. The Complainant's current balance is \$699.07 for both addresses. Tr. 25; PGW Exh. 2.

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 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*, 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).

Transfer of Prior Balance to M Street from Glendale Street

The Complainant alleges that PGW erred in holding him responsible for the charges at the Glendale Street address after December 2017, because he had left the premises in December 2017 and contacted PGW to have service discontinued in his name. PGW maintains that it properly held the Complainant responsible for the charges at the Glendale Street address from December 2017 to April 18, 2018 and that it has no records of him contacting the Company to discontinue service in his name in November 2017.

Section 1403 of the Public Utility Code defines "Customer" as follows:

"Customer." A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

66 Pa.C.S. § 1403.

The Complainant asserts that he is not responsible for charges from the Glendale Street address after December 2017, because he moved from that address and contacted PGW to discontinue service and he should not be responsible for any charges at that address after December 2017. However, for the time period at issue from December 2017 to April 18, 2018, the Complainant was listed as customer of record for the Glendale Street address according to PGW records. As such, the Complainant fits the definition of a customer under the law. “Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). Complainant has not established a *prima facie* case.

While the Complainant contends that he contacted PGW in November 2017, to discontinue the service at the Glendale Street address, PGW has no records that the Complainant contacted it in November 2017, to discontinue service. When the Complainant contacted PGW in April 2018, the Company took immediate action and removed the service from the Complainant’s name at the Glendale Street address. I find the Company’s records more persuasive in demonstrating that the Complainant did not contact PGW in November 2017. The Commission has determined that a customer of record who did not take reasonable action to remove service from his name is responsible for the unpaid arrearage, even when that customer does not reside at the service address. *Nixon v. PECO Energy Co.*, Docket No. C-2011-2240763 (Opinion and Order entered February 16, 2012).

Based on all of the above, it is clear that the Complainant has failed to meet his burden of proof under the law to establish that he was not responsible for the charges that were accrued at the Glendale Street address. The Complainant is the customer of record for the service address at the Glendale Street address for the time period at issue according to the PGW records and the Complainant was not able to establish that he resided at another location during the same time period. He did not become a PGW customer on M Street until July 2018. *See* PGW Exh. 2. Therefore, as the Complainant was customer of record for the Glendale Street address, he is liable for the charges on that account.

In so much as the Complainant is liable for the charges, PGW is permitted to hold the Complainant responsible for those charges. Pursuant to 56 Pa.Code § 56.16:

(a) A customer who is about to vacate a premise supplied with public utility service or who wishes to have service disconnected shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. . . .

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

The Company was entitled to hold the Complainant responsible for the balance from the Glendale Street address. It is not unreasonable for PGW to request that the Complainant pay his outstanding balance. There is nothing that the Company has done in this case that is in violation of the Commission's rules, regulations or an order. As such, the Complainant is responsible to pay the outstanding balance from the Glendale Street address, and his Complaint is dismissed.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the complainant. 66 Pa.C.S. § 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 “customer” is defined as a natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested. 66 Pa.C.S. § 1403.

5. A customer who is about to vacate a premise supplied with public utility service or who wishes to have service disconnected shall give at least seven days’ notice to the public utility, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. 56 Pa.Code § 56.16(a).

6. In the event of discontinuance or termination of service at a residence or dwelling, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 56 Pa.Code § 56.16(b).

7. “Mere bald assertions ... do not constitute evidence.” *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000); *see also, Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000).

8. The Complainant did not meet his burden of establishing that PGW violated the Public Utility Code, Commission regulations or a Commission Order regarding his responsibility for the outstanding balance from the Glendale Street address for the time period from December 2017 to April 18, 2018.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Michael Bernard, Jr. against the Philadelphia Gas Works at Docket No. F-2018-3004013 is denied and dismissed and;
2. That Docket No. F-2018-3004013 be marked closed.

Date: February 15, 2019

/s/
Marta Guhl
Administrative Law Judge