

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lataka Golden (Brooks)	:	
	:	
v.	:	F-2018-3004766
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s formal Complaint because she failed to sustain her burden of proof to establish that Philadelphia Gas Works wrongly determined that there was theft of service when there was evidence of tampering, or that the company erred in billing her for unbilled usage at the Service Address. This Decision also denies the Complainant’s request for a payment arrangement.

HISTORY OF THE PROCEEDING

On September 4, 2018, Lataka Golden (aka Brooks) (Complainant or Ms. Golden) 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 alleged that the utility had provided her with a “generated bill”. The Complainant requested better billing and a payment agreement on the charges.

This matter is a timely appeal of a decision from the Bureau of Consumer Services (BCS) dated August 7, 2018, at Case No. 3636114, which dismissed the informal complaint of the Complainant.

On October 10, 2018, Respondent filed an Answer indicating that the gas service at the Service Address was established by the Complainant on May 9, 2012 and was terminated on August 11, 2015, due to non-payment. The Respondent asserted that on January 13, 2018, it received a call from the Philadelphia Fire Department regarding a fire and illegal gas hook up at the Service Address. The Respondent indicated that it found the gas on and again shut off service. The Respondent indicated that it assessed the Complainant a bill for \$7,290.59 for the period from August 11, 2015, to January 13, 2018, for unauthorized usage.

By Telephone Hearing Notice dated November 2, 2018, a telephonic hearing was scheduled for Friday, December 7, 2018 at 10:00 a.m., and the matter was assigned to Special Agent Gail M. Chiodo.

On November 8, 2018, Special Agent Chiodo issued a Prehearing Order.

By Cancel/Reschedule/Judge Change Hearing Notice dated November 30, 2018, an initial in person hearing was scheduled for Thursday, January 3, 2019, at 10:00 a.m. and the matter was reassigned to me.

I issued a new Prehearing Order on November 30, 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 she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on January 3, 2019. Complainant appeared *pro se* and testified. The Complainant offered two exhibits which were entered into the record. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the

testimony of two witnesses, Nicholas Simeo and Jessica Glace. The Respondent offered seven exhibits which were entered into the record.

The hearing resulted in a transcript of 55 pages. The record closed on January 14, 2019, when I received the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Lataka Golden (Brooks), who resides at 761 Fern Street, Yeadon, Pennsylvania 19050. Tr. 7.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant previously resided and had gas service in her name at 2033 Rowan Street, Philadelphia, Pennsylvania 19140 (Service Address). Tr. 8.
4. The Complainant's mother, Annie Beckham, owns the Service Address. Tr. 8, 18.
5. The Complainant resided at the Service Address from approximately 2012 to 2015. Tr. 8.
6. Gas service at the Service Address was shut off due to non-payment when the service was in the Complainant's name on August 11, 2015. Tr. 17, 33; PGW Exh. 3.
7. The Complainant's daughter, Nivreye Kea, resided at the Service Address at some point in time. Tr. 17-18.

8. On January 13, 2018, PGW was called to the Service Address by the Philadelphia Fire Department, after a fire, where the Fire Department found an illegal gas hook-up. Tr. 27-28; PGW Exh. 1.

9. On January 14, 2018, the PGW technician found the gas on at the Service Address and turned it off and installed additional locking devices. Tr. 28-29; PGW Exh. 1.

10. The PGW technician found the meter on the floor and an appliance connector (bypass) installed on the pipe where the meter should have been. Tr. 29; PGW Exh. 2.

11. The PGW technician found two gas appliances at the Service Address: a house heater and hot water heater. Tr. 31; PGW Exh. 2.

12. The PGW technician removed the meter from the Service Address due to the bypass that was found. Tr. 31-32; PGW Exh. 2.

13. The Complainant did not contact the Company immediately after the fire at the Service Address. Tr. 40; PGW Exh. 7.

14. The first person to contact the Company after the fire was Annie Beckham, the Complainant's mother, on May 24, 2018. Tr. 40; PGW Exh. 7.

15. The Complainant accepted responsibility for the bills at the Service Address and attempted to have service restored in her name at the Service Address. Tr. 12, 19.

16. On May 31, 2018, the Complainant was billed for unauthorized usage from August 11, 2015, to January 14, 2018, in the amount of \$7,290.59, based on the historical usage from August 27, 2014 and July 28, 2015, when the Complainant was the customer of record. Tr. 48-49; PGW Exh. 5.

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*, 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.Cmwlt. 2001).

Tampering Allegations

The Complainant acknowledged that there was tampering at the Service Address. Tr. 9. The Complainant asserts that the tampering only took place for a few months when her daughter was residing at the Service Address. Tr. 9. The Complainant alleges that she lived at another address in Yeadon, Pennsylvania when the tampering occurred. Tr. 9.

In contrast, PGW presented the testimony of Field Service Supervisor, Nicholas Simeo. Mr. Simeo noted that gas service at the Service Address was shut off due to non-payment when the service was in the Complainant's name on August 11, 2015. Tr. 17, 33; PGW Exh. 3. On January 13, 2018, PGW was called out to the Service Address by the Philadelphia Fire Department, after a fire, where the Fire Department found an illegal gas hook-up. Tr. 27-28; PGW Exh. 1. On January 14, 2018, Mr. Simeo visited the Service Address based on the call from the Philadelphia Fire Department and found the gas on at the Service Address and turned it off and installed additional locking devices. Tr. 28-29; PGW Exh. 1. Mr. Simeo found the meter on the floor and an appliance connector (bypass) installed on the pipe where the meter should have been. Tr. 29; PGW Exh. 2. Mr. Simeo also found two gas appliances at the Service Address, a house heater and hot water heater. Tr. 31; PGW Exh. 2. He removed the meter from the Service Address due to the bypass that was found. Tr. 31-32; PGW Exh. 2.

PGW also presented the testimony of Jessica Glace, a Senior Customer Review Officer. Ms. Glace testified that the Complainant did not contact the Company immediately after the fire at the Service Address. Tr. 40; PGW Exh. 7. The first person to contact the Company after the fire was Annie Beckham, the Complainant's mother, on May 24, 2018. Tr. 40; PGW Exh. 7. At the time of the contact, Ms. Beckham indicated that her daughter was living at the Service Address and should be responsible for the outstanding balance. Tr. 42; PGW Exh. 7.

On May 31, 2018, the Complainant was billed for unauthorized usage from August 11, 2015, to January 14, 2018, in the amount of \$7,290.59, based on the historical usage from August 27, 2014 to July 28, 2015, when the Complainant was the customer of record. Tr. 48-49; PGW Exh. 5.

While the Complainant contends that the tampering was only for a few months, I am not persuaded by her testimony. It is well settled, “[m]ere bald assertions ... do not constitute evidence.” *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlt. 2000)(citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). The Complainant acknowledged that she lived in the Service Address. The gas service was terminated on August 11, 2015, for non-payment, while the service was in the Complainant’s name. The Complainant contends that her daughter was living at the Service Address at the time but there is nothing in the record to indicate that her daughter requested service in her name from PGW. There is no evidence in the record to establish that the Complainant’s daughter was living at the Service Address besides her testimony. The Complainant did not present her daughter to testify at the hearing in this case. While the Complainant contends she was living in Yeadon at the time of the fire at the Service Address, she did not present evidence that supported her assertions.¹ Further, The Complainant accepted responsibility for the bills at the Service Address and attempted to have service restored in her name at the Service Address. Tr. 12, 19.

Moreover, Mr. Simeo visited the Service Address based on a call from the Philadelphia Fire Department and found the gas on at the Service Address and turned it off and installed additional locking devices. Tr. 28-29; PGW Exh. 1. Mr. Simeo found the meter on the floor and an appliance connector (bypass) installed on the pipe where the meter should have been. Tr. 29; PGW Exh. 2. Mr. Simeo also found two gas appliances at the Service Address, a

¹ See Complainant Exhs. 1 & 2 (payroll and bank statements from November and December 2018, which establish a Yeadon, Pennsylvania address for the Complainant). This appears to be approximately 10 to 11 months after the fire at the Service Address.

house heater and hot water heater. Tr. 31; PGW Exh. 2. He removed the meter from the Service Address due to the bypass that was found. Tr. 31-32; PGW Exh. 2.

Based on the above, the Complainant has failed to meet her burden of establishing that PGW erred in holding her responsible for the charges at the Service Address. The Complainant acknowledged that she lived at the Service Address and could not establish when she moved to Yeadon, Pennsylvania. The Complainant also could not demonstrate that her daughter was living at the Service Address during the time period at issue. Mr. Simeo found evidence of tampering at the Service Address. Therefore, the Complainant has not established that PGW violated the Code, Commission regulations or Order in holding her responsible for the unauthorized usage charges and the Complaint must be dismissed in this regard.

Application for Service/Billing Dispute

The Complainant last had service in her name at the Service Address on August 11, 2015 when it was terminated for non-payment. Tr. 17, 33; PGW Exh. 3. The Complainant is currently trying to have service reestablished at the Service Address in her name. The Complainant also contends that the billing in this case was inaccurate, specifically related to the time period for the unauthorized usage.

Section 1403 of the Public Utility Code defines “Applicant” and “Customer” as follows:

“Applicant.” A natural person 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 utility service is requested.

and

“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. Based on the above definitions, the Complainant is an applicant for service in this matter.

The unauthorized usage was discovered on January 14, 2018. As was noted above, Ms. Glace testified that the Complainant did not contact the Company immediately after the fire at the Service Address. Tr. 40; PGW Exh. 7. She indicated that the first person to contact the Company after the fire was Annie Beckham, the Complainant's mother, on May 24, 2018. Tr. 40; PGW Exh. 7. On May 31, 2018, the Complainant was billed for unauthorized usage from August 11, 2015, to January 14, 2018, in the amount of \$7,290.59, based on the historical usage from August 27, 2014 to July 28, 2015, when the Complainant was the customer of record. Tr. 48-49; PGW Exh. 5. The Complainant did not offer any evidence to demonstrate that the PGW's billing for the unauthorized charges was inaccurate.

Section 1407 of the Public Utility Code states in pertinent part:

(d) Payment of outstanding balance at premises. --A public utility may also require the payment of any 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.

(e) Approval. --A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the commission.

66 Pa.C.S. § 1407.

Further, Section 56.35(b) of the Commission's regulations states the following:

(b) A public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person

other than the applicant, except as provided for in paragraphs (1) and (2).

(1) 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.

(2) A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in this paragraph, used to determine the applicant's liability for any outstanding balance.

52 Pa.Code § 56.35(b).

I conclude, pursuant to the above-cited sections, that the Company may require the Complainant to pay for the unauthorized usage prior to furnishing service at the Service Address. 66 Pa.C.S. § 1407 and 52 Pa.Code § 56.35(b). As previously determined, the Complainant is responsible for the unauthorized usage from August 11, 2015, to January 14, 2018, in the amount of \$7,290.59. PGW is not violating the Public Utility Code, Commission regulations or Order by requiring that this balance be paid in full before furnishing service to the Complainant at the service address. Accordingly, the Complainant's Complaint must be dismissed in this regard.

Payment Arrangement

The Complainant is not eligible for a payment arrangement in this matter. In *Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015), the Commission stated the following: "We 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.” *Id.* at 8. The Commission decided that the Mr. Fassett should not receive a Commission-ordered payment arrangement because he resided at the property while the unauthorized gas usage occurred. Similarly, since the Complainant was associated with the Service Address at the time the theft took place, she is not eligible for a Commission-issued payment arrangement. As such, the Complainant’s request for a payment arrangement must be denied and dismissed in this matter.

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 public utility may also require the payment of any 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. 66 Pa.C.S. § 1407.

5. A public utility may not require as a condition of providing service, payment of an outstanding balance for an account in the name of a person other than the applicant unless the applicant resided at the property where service is being requested during the time period the prior outstanding balance accrued and for the time the applicant resided for a

period of four years from the date of the service request. The four-year limit does not apply in instances of fraud or theft on the part of the applicant. 52 Pa. Code § 56.35(b)(1).

6. The public utility can establish the applicant previously resided at the address where service is requested through a mortgage or deed. 52 Pa. Code § 56.35(b)(2).

7. “Mere bald assertions ... do not constitute evidence.” *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000)(citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); 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 failed to meet her burden of demonstrating that the Company erred in calculating the amount charged for unauthorized usage for the Service Address.

9. The Complainant failed to meet her burden of establishing that the Company erred in billing her for unauthorized usage from August 11, 2015 to January 14, 2018, based on historical usage at the Service Address.

10. A payment arrangement is not “...appropriate when the person requesting the arrangement was involved in theft of utility service while residing at the service location.” *Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015).

11. The Complainant has not met her burden of establishing that she is eligible for a payment arrangement in this matter.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Lataka Golden (Brooks) against Philadelphia Gas Works at Docket No. F-2018-3004766 is denied and dismissed;
2. That the docket at Docket No. F-2018-3004766 be marked closed.

Date: April 2, 2019

/s/
Marta Guhl
Administrative Law Judge