

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shannon Newton

v.

Philadelphia Gas Works

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F-2018-3004640

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Shannon Newton’s formal Complaint because she failed to sustain her burden of proving that Philadelphia Gas Works wrongfully held her responsible for theft of service charges covering the period from June 2, 2009 to March 30, 2016.

HISTORY OF THE PROCEEDING

On September 13, 2018, Shannon Newton (Complainant or Ms. Newton) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the Respondent is wrongfully holding her responsible for charges related to theft of gas service at the Service Address. She averred that she never had gas service in her name. As relief, Ms. Newton requested that the Commission order PGW to rescind the gas bill issued to her for unmetered gas usage at that property.

This Complaint is a timely appeal of a decision issued by the Commission's Bureau of Consumer Services at BCS Case No. 3615628, which dismissed her informal complaint.

On October 3, 2018, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated October 16, 2018, notified the parties that the hearing for this case was scheduled on Tuesday, December 4, 2018, at 10:00 a.m.

A Prehearing Order was issued on November 5, 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 December 4, 2018. Shannon Newton appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of Sophourn Heng, James Carcel, and Tiffany Jones. The Respondent sponsored nine exhibits, which were admitted into the record.

At the hearing, Ms. Christlieb requested permission to submit, as late-filed Exhibit 10, the FedEx receipt with the delivery date of the proposed exhibits to Ms. Newton. The Complainant expressed interest in submitting late-filed exhibits of her own consisting of banking documents purporting to show that she did not make the February 19, 2016 payment towards Valarie Saunders' gas account at the Service Address. I instructed the parties that they had until December 14, 2018, to file their respective late-filed exhibits, and until December 31, 2018 to submit any written objections to the opposing party's late-filed exhibits.

On December 7, 2018, PGW submitted its late-filed Exhibit 10. Ms. Newton did not submit any late-filed exhibits or objections to PGW late-filed-Exhibit 10.

The record in this matter closed upon receipt of my copy of the transcript on January 9, 2019.

FINDINGS OF FACT

1. The Complainant is Shannon Newton who resides at 7143 Theodore Street, Philadelphia, PA 19142 (Service Address). Tr. 7.
2. Respondent is Philadelphia Gas Works.
3. Ms. Newton first moved to the Service Address with her family in 1995, when she was approximately five years old. Tr. 8, 9.
4. The Service Address has continuously served as Ms. Newton's mailing address. Tr. 19-20.
5. The Service Address appears on Ms. Newton's Identification Card. Tr. 19.
6. Ms. Newton's mother, Valarie Saunders, holds the deed for the Service Address. Tr. 10, 55, PGW Exhibit 4.
7. Valarie Saunders was the customer of record for the Service Address during the period January 14, 1996 to July 14, 2004. Tr. 71.
8. Alphonso Newton is Complainant's father. Tr. 55, PGW Exhibit 5.
9. Alphonso Newton followed Valarie Saunders as the customer of record for the Service Address. Tr. 71.
10. Alphonso Newton was the customer of record for the Service Address during the period November 14, 2005 to June 2, 2009. Tr. 71.

11. Valarie Saunders and Alphonso Newton were the only customers of record for the Service Address during the period 1996 to 2018. Tr. 56.

12. On June 2, 2009, gas service at the Service Address was shut off for non-payment of the outstanding balance. Tr. 30, 40-41, PGW Exhibit 1.

13. On February 19, 2016, a woman who identified herself “as the [customer of record’s] daughter Shannon,” made a debit card payment of \$200.00 to Valarie Saunders’ PGW account for the Service Address. Tr. 52, 70-72, PGW Exhibits 4 and 8.

14. On March 30, 2016, PGW visited the Service Address on an unbilled usage tip and found gas service on at the property.

15. On March 30, 2016, PGW shut off gas service at the Service Address by using an expander inside the curb box. Tr. 30, 40-42, PGW Exhibit 1 and 3.

16. On May 11, 2018, Shannon Newton contacted PGW requesting to establish gas service in her name at the Service Address. Tr. 53-55, PGW Exhibit 3.

17. On May 14, 2018, a PGW field service technician, Sophourn Heng, visited the Service Address on a safety check/unbilled usage investigation order and was given access to the property by Shannon Newton. Tr. 25-26, 55, PGW Exhibit 1.

18. During the May 14, 2018 field visit, Mr. Heng found gas service off at the Service Address. PGW Exhibit 1.

19. During the May 14, 2018 field visit, Mr. Heng detected the following gas appliances connected to the fuel line: a 90,000 BTU house heater, a 30,000 BTU water heater and a 60,000 BTU range. Tr. 26, 32, PGW Exhibit 1.

20. On May 14, 2018, Mr. Heng found that the Encoder Receiver Transmitter (ERT) had been removed from the meter and was laying on the floor. Tr. 26-28, 31, 44, PGW Exhibit 1.

21. The ERT device enables PGW to receive remote readings from its gas meters. Tr. 44.

22. If the ERT device is removed, the meter ceases to record gas usage. Tr. 46-47.

23. On May 14, 2018, Mr. Heng removed the meter from the Service Address and installed locking plugs and bike locks in its place. Tr. 31, PGW Exhibit 1.

24. On May 14, 2018, Mr. Heng prepared a theft report relating his findings at the Service Address. Tr. 28-29, PGW Exhibit 1.

25. Following Mr. Heng's field investigation, PGW assessed \$10,687.18 in theft of service charges against the Complainant. Tr. 57, PGW Exhibit 6.

26. The \$10,687.18 charges cover the period from June 2, 2009 to March 30, 2016 and were based on historical usage at the Service Address during the period May 1, 2006 to March 30, 2007. *Id.*

27. Ms. Newton was an adult during the period covered by the theft of service charges. Tr. 13, 16.

DISCUSSION

In her formal Complaint, Ms. Newton alleged that the Respondent is wrongfully holding her responsible for charges related to theft of gas service at the Service Address. As relief,

Ms. Newton requested that the Commission order PGW to rescind the gas bill issued to her 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).

At the evidentiary hearing, Ms. Newton testified that she first moved to the Service Address with her family in 1995, when she was approximately five years old. Tr. 8, 9.

Ms. Newton's mother, Valarie Saunders, holds the deed for the Service Address. Tr. 10, 55, PGW Exhibit 4. Ms. Saunders moved out of the Service Address in 2014, leaving the property in her husband's, Alphonso Newton's, care. Tr. 10-11. Soon after, Mr. Newton and the Complainant also moved out of the Service Address. Tr. 14, 17

Ms. Newton testified that, after she left the Service Address around 2014, she resided with a friend at 3524 North 19th Street, Philadelphia, PA 19140. Tr. 18. However, she admitted that all her mail is sent to the Service Address. Tr. 19. The Service Address also appears on Ms. Newton's Identification Card. Tr. 19-20. According to the Complainant, no one has resided at the Service Address since 2014 or 2015. Tr. 8. In the summer of 2018, the Complainant decided to move back to the Service Address with her mother's permission. Tr. 8-9.

In response to Ms. Newton's testimony, PGW presented the testimony of Sophourn Heng, who is a field service technician for PGW; James Carcel, who is field service and revenue protection supervisor at PGW; and Tiffany Jones, who is senior a customer review unit officer for the Respondent. Together, the three PGW witnesses successfully rebutted Ms. Newton's testimony.

PGW's witnesses established that Valarie Saunders was the customer of record for the Service Address during the period January 14, 1996 to July 14, 2004. Tr. 71. Alphonso Newton followed Valarie Saunders as the customer of record for the Service Address, having gas service in his name during the period from November 14, 2005 to June 2, 2009. Tr. 71. Ms. Saunders and Mr. Newton were the only customers of record for the Service Address during the period 1996 to 2018. Tr. 56.

On June 2, 2009, gas service at the Service Address was shut off for non-payment. Tr. 30, 40-41, PGW Exhibit 1. This is the last time that gas should have been on at the Service Address. Tr. 41. On March 30, 2016, PGW visited the Service Address on an unbilled usage tip and found gas service on at the property. Unable to gain access to the meter inside the

property, PGW shut off gas service by using an expander inside the curb box. Tr. 30, 40-42, PGW Exhibit 1 and 3.

On February 19, 2016, a woman who identified herself “as the [customer of record’s] daughter Shannon” made a debit card payment of \$200.00 to Valarie Saunders’ PGW account for the Service Address. Tr. 52, 70-72, PGW Exhibits 4 and 8. On May 11, 2018, Shannon Newton contacted PGW requesting to establish gas service in her name at the Service Address. Tr. 53-55, PGW Exhibit 3. Prompted by Ms. Newton’s call and the property’s history, a PGW field service technician, Sophourn Heng, visited the Service Address on May 14, 2018, on a safety check/unbilled usage investigation order. Tr. 25-26, 55, PGW Exhibit 1. Upon his arrival, Mr. Heng was given access to the property by Shannon Newton. *Id.* He found gas service off at the Service Address. PGW Exhibit 1.

Mr. Heng testified that, during the May 14, 2018 field visit, he found that the ERT had been removed from the gas meter and was laying on the floor. Tr. 26-28, 31, 44, PGW Exhibit 1. He removed the meter from the Service Address and installed locking plugs and bike locks in its place. Tr. 31, PGW Exhibit 1. At the conclusion of his visit, Mr. Heng prepared a theft report relating his findings at the Service Address. Tr. 28-29, PGW Exhibit 1. In his report, he listed the following gas appliances connected to the property’s fuel line: a 90,000 BTU house heater, a 30,000 BTU water heater and a 60,000 BTU range. Tr. 26, 32, PGW Exhibit 1.

Mr. Carcel explained that the ERT device enables PGW to receive remote readings from its gas meters. Tr. 44. If the ERT device is removed, the meter ceases to record gas usage. Tr. 46-47. In addition, without the ERT device, PGW is unable to detect unauthorized usage of gas at a property without investigating the outside curb box. Tr. 47. This, he explained, is what occurred on March 30, 2016. Tr. 47-48.

Lastly, Ms. Jones testified that following Mr. Heng’s field investigation, PGW assessed \$10,687.18 in theft of service charges against the Complainant. Tr. 57, PGW Exhibit 6. The \$10,687.18 charges cover the period from June 2, 2009 to March 30, 2016 and were based on historical usage at the Service Address during the period May 1, 2006 to March 30, 2007. *Id.*

Ms. Newton failed to rebut the evidence presented by the Respondent's witnesses. Instead, she claimed that she did not make the debit card payment to PGW in February of 2016 and speculated that it must have been her sister impersonating her and using a pre-paid debit card. Whether or not the Complainant made the payment in February of 2016 does not change Ms. Newton's admission that she resided at the Service Address until 2014, that she continued to have access to the property, that she identified the Service Address as her mailing and residence address in her state-issued Identification Card, or that she was an adult during the period in question. She was unable to substantiate her claim that she resided elsewhere during the period from 2014 to December 2018, just as she failed to substantiate her claim that she did not make the February 2016 payment from her debit card and bank account. 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). Ms. Newton did not present any additional evidence to support her Complaint.

The Commission's regulation at 52 Pa.Code § 56.35(b)(1) allows a public utility to require the payment of any outstanding balance or portion of an outstanding balance if the applicant or customer resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant or customer resided there, not exceeding four years prior to the date of requesting that service be restored. The Commission regulation clearly instructs that the four-year limit does not apply in instances of fraud and theft. 52 Pa.Code § 56.35(b)(1). Additionally, subsection (b)(2) of the same Commission regulation provides that "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." 52 Pa.Code § 56.35(b)(2).

Upon carefully reviewing the record in this matter, I find that the Complainant failed to prove by a preponderance of the evidence that PGW violated a Commission statute, regulation or order when it concluded that theft of service had occurred at the Service Address during the period June 2, 2009 to March 30, 2016, and assessed charges related to it against

Ms. Newton. The evidence presented by Ms. Newton is outweighed by the evidence presented by PGW. Ms. Newton's formal Complaint against PGW is dismissed in its entirety.

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. As a condition of restoring service to a customer, the public utility can require the payment of an outstanding balance and the four-year statute of limitations does not apply to instances of fraud or theft. 52 Pa.Code § 56.35(b)(1).

5. 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. 52 Pa.Code § 56.35(b)(2).

6. "Mere bald assertions ... do not constitute evidence." *Mid-Atlantic Power Supply Association of Pa. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000)(citing *Pa. 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).

7. The Complainant failed to meet her burden of establishing that the Company erred in billing her for unauthorized usage at the Service Address from June 2, 2009 to March 30, 2016, based on historical usage at the premises.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW late-filed Exhibit 10 is admitted into the record in this matter.
2. That the formal Complaint filed by Shannon Newton against Philadelphia Gas Works at Docket No. F-2018-3004640 is denied.
3. That the Secretary's Bureau mark this matter closed.

Date: April 5, 2019

/s/
Eranda Vero
Administrative Law Judge