



COMMUNITY LEGAL SERVICES  
OF PHILADELPHIA

June 18, 2019

Secretary Rosemary L. Chiavetta  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Tomisha Palmer v. Philadelphia Gas Works, Docket No. F-2018-3006197**

Dear Secretary Chiavetta:

Enclosed for filing is Complainant's **Initial Brief** submitted pursuant to 52 Pa. Code § 5.502(c). This document has been filed electronically with the Commission and served on the parties.

Sincerely,

A handwritten signature in black ink that reads "Josie B. H. Pickens". The signature is written over a horizontal line.

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Enclosures  
cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>TOMISHA PALMER</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>F-2018-3006197</b>
	:	
<b>PHILADELPHIA GAS WORKS</b>	:	
<b>Respondent</b>	:	

**INITIAL BRIEF OF COMPLAINANT TOMISHA PALMER**

**I. STATEMENT OF THE CASE**

**A. Procedural History**

Tomisha Palmer (“Complainant” or “Ms. Palmer”) filed an informal complaint with the Public Utility Commission’s Bureau of Consumer Services (BCS) on September 25, 2018 because Philadelphia Gas Works (“PGW”) requested she pay \$6,571.15 to establish gas service in her name at her new address. On October 15, 2018, BCS issued a decision denying the Informal Complaint but reducing the amount owed to \$5,314.23. On November 26, 2018, Complainant filed a formal complaint with the Public Utility Commission (PUC). An Initial Hearing was scheduled for March 21, 2019. On March 13, 2019, through counsel, Complainant requested a continuance and notified Administrative Law Judge Pell of her intent to file a Petition for Interim Emergency Relief. On March 14, 2019, Complainant filed her Petition for Interim Emergency Relief. ALJ Pell granted the continuance and scheduled the hearing on the Petition for Interim Emergency Relief for March 21, 2019. A hearing was held on that date and on April 12, 2019, ALJ Pell issued an order denying the Petition. A Further Hearing was then held on May 7, 2019 on the merits of the Formal Complaint.

## **B. Facts of the Case**

On August 1, 2018, Complainant went to a PGW office to apply for gas service at 1763 N. Croskey Street. PGW informed Complainant that she could not establish service at 1763 N. Croskey Street because PGW was holding Complainant responsible for \$5,314.23 in billing charges associated with a meter bypass at 4244 N. Hicks Street in Philadelphia. The sole basis for PGW's denial of service to Complainant at 1763 N. Croskey Street is PGW's claim that she is responsible for charges associated with a meter bypass at 4244 N. Hicks Street. Complainant is low-income and could not afford to pay \$5,314.23 to establish service at 1763 N. Croskey Street.

Complainant does not own the property at 4244 N. Hicks and did not continuously occupy it during the period in dispute, July 30, 2014 to June 27, 2017. Complainant did not have exclusive possession or control of 4244 N. Hicks Street during the periods when she resided as a tenant at the property. Complainant was not PGW's customer at 4244 N. Hicks Street immediately preceding the discovery of the meter bypass. Oliver Jackson was the last known customer prior to the discovery of the meter bypass. Oliver Jackson was Complainant's common law husband and died in February 2017. Complainant was not aware of the meter bypass until it was discovered by PGW on June 27, 2017, after she contacted PGW and requested that someone come check on the smell of gas. Between July 30, 2014 and June 27, 2017 PGW did not visit 4244 N. Hicks Street or attempt to contact Complainant.

## **II. SUMMARY OF ARGUMENT**

Complainant has shown by a preponderance of the evidence that PGW wrongly denied her application for service at 1763 N. Croskey Street. PGW's denial is premised upon nonpayment of estimated usage charges due to a meter bypass at a prior address, 4244 N. Hicks Street, where Complainant was a tenant. Complainant had no knowledge of any efforts taken by

third parties, and did not provide any permission, assistance or authorization to any such third parties, to bypass the PGW gas meter at 4244 N. Hicks Street. Complainant seeks to enforce her right to service from PGW, on the terms and conditions of PGW's Tariff, and asserts that PGW has committed multiple violations of the Public Utility Code and the PUC Regulations in denying her service. Furthermore, Complainant submits that PGW violated PUC Regulations concerning the termination of gas service at 4244 N. Hicks Street and its own internal policies concerning the investigation and discovery of potential meter tampering, both to her detriment.

Complainant submits that PGW wrongfully denied her service and payment arrangement terms, and inappropriately obstructed her access to PGW's Customer Assistance Program, the Customer Responsibility Program ("CRP"). She submits that the Public Utility Commission has granted payment arrangements to applicants who resided at a property where unauthorized use occurred but who, like Complainant, were not culpable in the unauthorized use of utility service. Although Complainant has, due to the receipt of financial assistance from a City agency, finally obtained PGW service in her name at 1763 N. Croskey Street, she nonetheless seeks the PUC's ruling in her favor that PGW violated the Public Utility Code, PUC Regulations, and PGW's own Tariff in denying and delaying her service at her new address.<sup>1</sup>

### **III. ARGUMENT**

#### **A. The Complainant proved by a preponderance of the evidence that she did not authorize and was not aware of a meter bypass at 4244 N. Hicks Street.**

The Complainant bears the burden of proof in this Formal Complaint pursuant to 66 Pa. C.S. § 332(a). To meet her burden, she must establish by a preponderance of the evidence that PGW was responsible for the problems alleged in the Complaint through a violation of the Code

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<sup>1</sup> Complainant established a gas service account in her name at 1763 N. Croskey Street on May 29, 2019.

or a regulation or order of the Commission.<sup>2</sup> Preponderance of the evidence means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party.<sup>3</sup> Preponderance does not depend on the number of witnesses testifying on either side but rather on the credibility of the testimony in light of all the evidence in the case.<sup>4</sup> If the Complainant presents evidence sufficient to initially satisfy the burden of proof, the burden shifts to PGW to rebut the evidence of the Complainant, and only if PGW's evidence is of co-equal weight does the Complainant need to present additional evidence to rebut PGW's evidence.<sup>5</sup> Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.<sup>6</sup>

Ms. Palmer has produced substantial evidence to prove that she did not authorize and was not aware of a meter bypass at 4244 N. Hicks Street.<sup>7</sup> Ms. Palmer established that she was a tenant at 4244 N. Hicks Street where she resided intermittently with her now deceased common law husband, Oliver Jackson, and her children between September 2012 and June 2017.<sup>8</sup> Ms. Palmer does not own the property at 4244 N. Hicks Street. Since 1999, the property has been owned by Iota Trust, which was established by William Schwartz, Ms. Palmer's former landlord at 4244 N. Hicks Street.<sup>9</sup> Ms. Palmer testified that her landlord, her landlord's sons, and contractors hired by her landlord had access to 4244 N. Hicks Street during her tenancy.<sup>10</sup> As a

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<sup>2</sup> *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990).

<sup>3</sup> *Se-Ling Hoisery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

<sup>4</sup> *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957), cert. denied, 353 U.S. 965 (1957).

<sup>5</sup> *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlt. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

<sup>6</sup> *Mill v. Commw., Pa. Pub. Util. Comm'n*, 67 Pa. Commw. 597, 447 A.2d 1100 (1982).

<sup>7</sup> Petition for Interim Emergency Relief Hearing ("IER Hearing"), Tr. at 33:13 through 34:3.

<sup>8</sup> *Id.* at 27:24 through 28:23; *Id.* at 73:16 through 75:23. Ms. Palmer testified that during periods when she and Mr. Jackson were separated she would leave the residence and stay with her mom, sister, and family friend.

<sup>9</sup> Further Hearing Exhibit JE-1, Stipulation 4; Further Hearing Tr. at 253:12-20; IER Exhibit R-1.

<sup>10</sup> IER Hearing Tr. at 32:15 through 33:12.

tenant, Ms. Palmer did not have a right of exclusion or control over the property.<sup>11</sup> Ms. Palmer has worked for the Philadelphia School District, as a general cleaner, for the past 20 years and lacks the technical knowledge to bypass a meter.<sup>12</sup>

Ms. Palmer testified that she was not aware of any meter bypass at the property. She stated that between November 19, 2013 and June 27, 2017, she believed Oliver Jackson to be PGW's customer.<sup>13</sup> Ms. Palmer testified that she opened an account with PGW at the start of her tenancy; however, after her PGW account was terminated for nonpayment, Mr. Jackson assured her that he had lawfully established service in his name.<sup>14</sup> Ms. Palmer was aware that Oliver Jackson's account was terminated for nonpayment on or about July 30, 2014 but she believed that Mr. Jackson lawfully re-established PGW service in his name after the shut off.<sup>15</sup> Oliver Jackson died on February 6, 2017.<sup>16</sup> Mr. Jackson's death certificate identified his residence as 4244 N. Hicks Street.<sup>17</sup> Ms. Palmer was not aware of a meter bypass at 4244 N. Hicks Street until after Oliver Jackson died, when PGW discovered a bypass on June 27, 2017.<sup>18</sup> Ms. Palmer's actions following the death of Mr. Jackson are consistent with her testimony that she was not aware of the bypass. As reflected in PGW's records, Ms. Palmer contacted PGW after Mr. Jackson's death to inquire into the status of a grant application.<sup>19</sup> Someone aware of a bypass would have no reason to make that contact. Furthermore, that she was unaware of the bypass is supported by the fact that she took no action to conceal the bypass or obstruct access to the

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<sup>11</sup> It is an established principle of American property law that homeownership, and not tenancy, confers a bundle of rights upon the owner. Included within that bundle are the rights to possess, the right to use, and the right to exclude. *See, e.g., United States v. General Motors*, 323 U.S. 373 (1945).

<sup>12</sup> Further Hearing Tr. at 218:18 through 219:7.

<sup>13</sup> IER Hearing Tr. at 117:9 through 118:3.

<sup>14</sup> IER Hearing Tr. at 31:14 through 32:14.

<sup>15</sup> Further Hearing Tr. at 234:14-22.

<sup>16</sup> Further Hearing Exhibit C.

<sup>17</sup> *Id.*

<sup>18</sup> IER Hearing Tr. at 33:23 through 34:3.

<sup>19</sup> Further Hearing PGW Exhibit 16, pg. 5.

basement prior to allowing both a child protective services agency and PGW to access the property.<sup>20</sup> PGW's records corroborate that service was established in Oliver Jackson's name on November 19, 2013.<sup>21</sup> Mr. Jackson, and not Ms. Palmer, was PGW's customer of record preceding the discovery of the meter bypass.

PGW did not successfully rebut Ms. Palmer's testimony or introduce any evidence to show that Ms. Palmer effectuated the bypass or authorized it any way.<sup>22</sup> The thrust of PGW's argument is that Ms. Palmer should have known about the meter bypass, but PGW did not successfully rebut Ms. Palmer's evidence by showing that she was aware, in fact, of the bypass or even aware that Oliver Jackson had failed to lawfully re-establish PGW service in his name after July 30, 2014. PGW's argument is simply without sufficient evidence to support it.

PGW attempted to show that Ms. Palmer would have seen the bypass. PGW failed to make a convincing demonstration. PGW's technician was required, by Company policy, to take a photograph of the bypass on the date that it was discovered but he did not.<sup>23</sup> Nor did he document, as required by PGW policy, any basis for his failure or inability to take a photograph of the bypass.<sup>24</sup> In the absence of such information, his testimony that the bypass would have been visible is unsupported. Indeed, due to the witness's own failure, PGW lacked photographs required by Company policy which could reveal vital information about the appearance of the

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<sup>20</sup> IER Hearing Tr. at 58:2-5; Further Hearing Tr. at 270:12-18.

<sup>21</sup> Further Hearing Exhibit JE-1, Stipulation 7; IER Hearing Exhibit R-4.

<sup>22</sup> Any argument that PGW sincerely believed Ms. Palmer personally caused or authorized the bypass at 4244 N. Hicks Street is thoroughly undermined by the uncontested evidence that as of the date of the Further Hearing in this matter PGW had taken no action to investigate or protect its meter or other PGW property at 1763 N. Croskey Street, the new address where Ms. Palmer resided without natural gas service since August 2018. Further Hearing Exhibit JE-1, Stipulation 19.

<sup>23</sup> Further Hearing Exhibit JE-1, PGW Response to Palmer I-23; Further Hearing Tr. at 271:11-23; 311:18 through 314:4.

<sup>24</sup> *Id.*

meter and/or the basement at the time the bypass was discovered.<sup>25</sup> Furthermore, PGW's testimony cannot establish that it would be obvious to a layperson such as Complainant, who lacks technical knowledge of PGW metering equipment,<sup>26</sup> that PGW's meter had been bypassed.

PGW offered the owner of the property, William Schwartz, as a witness to testify as to the current status of the basement at 4244 N. Hicks Street. Mr. Schwartz testified that a new tenant currently occupies the property.<sup>27</sup> Mr. Schwartz also presented photos purportedly taken about a week before the hearing, showing the present status of the basement and the currently-installed gas meter.<sup>28</sup> These photographs cannot be relied upon as evidence to show what the basement looked like in 2017 when Ms. Palmer resided at the property. It bears noting, and is consistent with Ms. Palmer's testimony, that Mr. Schwartz continues to have control over the property, notwithstanding the presence of a new tenant, and was able to access the property, the basement and the meter for purposes of taking photographs to provide to PGW in this proceeding.

Most importantly, it is apparent from the photos taken by Mr. Schwartz that the basement is unfinished, having walls covered with crumbling, discolored plaster or stucco, and is most likely suitable for use primarily for storage purposes.<sup>29</sup> When asked, Ms. Palmer testified she was not certain of the location of the PGW meter, only that she believed it was in the basement, and that the basement was a part of the house she did not access.<sup>30</sup> Even if PGW could demonstrate, which it cannot, that a layperson like Ms. Palmer would have noticed and

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<sup>25</sup> PGW's witness testified that other persons were present in the home at the time and that police and DHS personnel were on site. Further Hearing Tr. at 268:19-23. This doesn't excuse his failure to appropriately document a meter bypass, consistent with Company policy, particularly given the ubiquity of camera phones to quickly fulfill such obligations.

<sup>26</sup> Further Hearing Tr. at 218:18 through 219:7.

<sup>27</sup> Further Hearing Tr. at 257:4-6.

<sup>28</sup> Further Hearing Tr. at 257:21 through 258:2.

<sup>29</sup> It is apparent that Mr. Schwartz's current tenants utilize the basement for this purpose. Further Hearing PGW Exhibit 4.

<sup>30</sup> IER Hearing Tr. at 57:3-10.

understood the significance of a meter bypass, Ms. Palmer's testimony demonstrates she simply had no occasion to do so.

PGW argued that evidence that suggests that Oliver Jackson bypassed the meter "doesn't alleviate Ms. Palmer's responsibility."<sup>31</sup> This argument must fail. Evidence that someone other than Ms. Palmer likely bypassed the meter is highly relevant to the determination of whether PGW can deny Ms. Palmer the payment options that would be available to a similarly situated customer who PGW has not labelled a thief. PGW did not rebut testimony that Oliver Jackson resided at the property and had access to the meter. PGW's cross examination underscored that it was Oliver Jackson, and not Ms. Palmer, who was a contractor by trade and who by implication possessed the requisite skills to cause a meter bypass.<sup>32</sup> PGW's own evidence revealed that it was Oliver Jackson, and not Mr. Palmer, who was PGW's customer preceding the discovery of the meter bypass.<sup>33</sup> Further, Ms. Palmer was a tenant at 4244 N. Hicks Street and testified that there were others, including her landlord, his sons, and his agents who had access to the property.<sup>34</sup> PGW's own witness testified that on the day the meter was removed there were adults other than Ms. Palmer in the property.<sup>35</sup> All of these individuals had access to PGW's meter. Ms. Palmer has met her burden of proof in this proceeding by producing substantial evidence to show that she did not authorize and was not aware of a meter bypass at 4244 N. Hicks Street. PGW did not successfully rebut Ms. Palmer's evidence.

**B. Ms. Palmer was eligible for a payment arrangement and enrollment in PGW's Customer Assistance Program at 1763 N. Croskey Street because she did not willfully or knowingly authorize the meter bypass at 4244 N. Hicks Street.**

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<sup>31</sup> Further Hearing Tr. at 360:8-11.

<sup>32</sup> Further Hearing Tr. at 237:18 through 238:10.

<sup>33</sup> Further Hearing Exhibit JE-1, Stipulation 7; IER Hearing Exhibit R-4.

<sup>34</sup> IER Hearing Tr. at 32:15 through 33:12.

<sup>35</sup> Further Hearing Tr. at 272:3-8.

Because Ms. Palmer did not willfully or knowingly misuse gas service, she should not be prohibited from accessing the customer protections that any other customer would access under the Public Utility Code. Ms. Palmer has income under 135% of the Federal poverty level and therefore should have been eligible for a payment arrangement and enrollment in PGW's Customer Assistance Program under 66 Pa. C.S. §§ 1405(b)(1), 1407(c)(2)(iii), 1410.1(1)-(2) and 52 Pa. Code § 56.191(c)(2)(iv) to initiate service at her new address.<sup>36</sup> PGW deprived Ms. Palmer of these customer protections when it denied her service at 1763 N. Croskey Street unless she made full payment of estimated charges from 4244 N. Hicks Street.

The Public Utility Code authorizes the Commission to establish payment arrangements between a public utility and an applicant.<sup>37</sup> Section 1405 of the Public Utility Code permits the Commission to establish an arrangement that extends up to five years for customers with a gross monthly income not exceeding 150% FPL.<sup>38</sup> Where a low income applicant is seeking to reconnect service, the Public Utility Code and Commission Regulations authorize a public utility to require payment over 24 months of any outstanding balance incurred by the applicant.<sup>39</sup> The Code and Regulations require applicants with income below 135% FPL to enroll in PGW's Customer Assistance Program prior to reinstating service pursuant to a payment arrangement.<sup>40</sup> PGW currently operates a Customer Assistance Program, the Customer Responsibility Program (CRP), which, pursuant to PGW's current Commission approved Universal Service and Energy Conservation Plan, is available to *all* low-income residential customers with a gross household income and size at or below 150% FPL.<sup>41</sup> When an applicant contacts PGW to make a payment

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<sup>36</sup> See IER Hearing Tr. at 49:1-4.

<sup>37</sup> 66 Pa.C.S. § 1405(a).

<sup>38</sup> 66 Pa.C.S. § 1405(b)(1).

<sup>39</sup> 66 Pa.C.S. § 1407(c)(iii); 52 Pa. Code § 56.191 (c)(2)(iv).

<sup>40</sup> *Id.*

<sup>41</sup> *PGW Universal Service Plan for 2017-2020 Submitted in Compliance with 52 Pa. Code § 62.4*, Docket No. M-2016-2542415. PGW's plan does not permit PGW to deny CRP enrollment to applicants who have been associated

arrangement, the Public Utility Code requires PGW to provide the applicant with information about CRP and to refer the applicant to PGW's universal service program administrator to determine CRP eligibility and to apply for the program.<sup>42</sup>

The Commission has recently ruled that payment arrangements are available for charges that result from unauthorized use of service (including meter bypass) when the customer or applicant requesting the arrangement was not the person who committed the theft.<sup>43</sup> This rule aligns with PGW's Tariff, which also prohibits PGW from penalizing customers who were not responsible for the theft of service.<sup>44</sup>

Payment arrangements are available for applicants requesting service when they were not the party responsible for the theft or tampering. In *Oduwole v. PGW*, No. F-2018-3001419, 2019 WL 1506839, at \*1 (Mar. 28, 2019), the complainant, Ms. Oduwole, was the last customer of record at the property and resided at the property for part of the time while unauthorized use occurred.<sup>45</sup> Ms. Oduwole testified that she had nothing to do with the tampering, but did have access to the property even when she was not residing there.<sup>46</sup> The ALJ concluded that because the meter was found on the floor connected to a flex connector, and the complainant was connected to the address, she was responsible for the tampering.<sup>47</sup> Even so, the ALJ provided complainant a payment arrangement, noting, "the Commission has ordered payment arrangements regarding the payment of non-CAP arrears in other cases even though a

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with unauthorized usage. While the plan requires CRP customers to pay full unauthorized usage charges for which they are responsible it only prohibits enrollment in CRP (for a period of one year) if the customer commits two or more instances of unauthorized usage.

<sup>42</sup> 66 Pa.C.S. §§ 1410.1(1)-(2).

<sup>43</sup> See *Davis v. PGW*, No. F-2016-2573100, 2017 WL 6018105, at \*10 (Oct. 26, 2017); *Oduwole v. PGW*, No. F-2018-3001419, 2019 WL 1506839, at \*1 (Mar. 28, 2019). But see *Fassett v. PGW*, No. F-2014-2408541, 2015 WL 1957867, at \*6 (Mar. 26, 2015).

<sup>44</sup> See PGW Gas Service Tariff § 8.3.C.

<sup>45</sup> *Oduwole v. PGW*, 2019 WL 1506839, at \*1 (Mar. 28, 2019).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

Complainant shows a poor payment history and has defaulted on prior company payment arrangements” (referencing the ALJ’s decision).<sup>48</sup> The Commission reversed the ALJ’s ruling that simply because Ms. Oduwole was connected to the property during the period of unauthorized use that she was responsible for all of the charges.<sup>49</sup> It removed account charges that accrued during the periods that Ms. Oduwole was residing outside of the property, issued a more generous payment arrangement, and also urged PGW to discuss other options with the complainant, including access to its Customer Assistance Program.<sup>50</sup>

Similarly, in *Davis v. PGW*, No. F-2016-2573100, 2017 WL 6018105 (Oct. 26, 2017), the ALJ granted the complainant, Ms. Davis, a payment arrangement for unauthorized usage charges that occurred at the service address. ALJ Vero determined that although Ms. Davis, as the owner of the service address, was responsible for the theft charges, she was not “willfully or knowingly engaged in the theft of gas.”<sup>51</sup> The ALJ reasoned that the complainant was akin to a customer with a malfunctioning meter rather than someone culpable for theft:

In the present case, there is no fraud, theft, or willful misuse of utility service on the part of Ms. Davis. Any benefit that she may have derived from the unauthorized usage of gas service was similar to what she would have derived had the PGW meter malfunctioned or failed, or had service been provided under a “user without a contract” account. This distinction is important because it may allow Ms. Davis to pursue a payment arrangement with PGW or with the Commission for the charges accrued during the period in which she had legal control and ownership of the Service Address.<sup>52</sup>

In this case, the ALJ drew a line between a customer who willfully misused gas and an innocent third party who benefited from the service but did not knowingly or willfully commit theft of service.

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Davis v. PGW*, No. F-2016-2573100, 2017 WL 6018105, at \*9 (Oct. 26, 2017).

<sup>52</sup> *Id.* at \*10.

In contrast, the Commission has declined to grant payment arrangements when the complainant was involved in the theft of service. In *Fassett v. PGW*, No. F-2014-2408541, 2015 WL 1957867 (Mar. 26, 2015), the Complainant resided at the property, owned the property, and was found to have been involved in the theft of gas service.<sup>53</sup> The Commission determined that the complainant's statements that he lived without gas at the property was not supported by evidence and noted that he did not dispute his responsibility for the unauthorized use.<sup>54</sup> The facts in *Oduwole* and *Davis* contrast the facts in *Fassett* because, in those cases, there was not sufficient evidence showing complainants were involved in the actual theft of service.

The Commission has previously determined that when a complainant established a *prima facie* case showing that she was not aware of meter tampering that occurred at a property where she resided, the burden to rebut the complainant's evidence shifts to the respondent.<sup>55</sup> In *Pitman v. PGW*, Docket No. F-2013-2395041, 2014 WL 4644291 (Pa.P.U.C.), the ALJ determined that "PGW produced no evidence demonstrating that the Complainant was aware of meter tampering, that the Complainant knew of any gas being stolen at any time, or that the Complainant has any responsibility for those events." Ultimately, the Commission decided that while the complainant was responsible for charges that accrued while she resided at the property, she should not be denied service or charged a deposit based on the meter tampering that occurred.<sup>56</sup>

As discussed above, Ms. Palmer introduced substantial evidence to prove that during the time that she resided at 4244 N. Hicks Street she did not have exclusive possession or control of the property and she does not possess the technical skill or expertise to effectuate a meter bypass. Ms. Palmer was not the last customer of record and testified that she believed that her common

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<sup>53</sup> *Fassett v. PGW*, No. F-2014-2408541 at \*6.

<sup>54</sup> *Id.* at \*5-6.

<sup>55</sup> *Nicole Pitman v. PGW*, Docket No. F-2013-2395041, 2014 WL 4644291 (Pa.P.U.C.) (Order entered November 7, 2014).

<sup>56</sup> *Id.* at \*1.

law husband, Oliver Jackson, was handling the PGW bill as they had agreed. Ms. Palmer was responsible for the PECO bill and regularly made payments during the tenancy at the property.<sup>57</sup> She did not discover the theft until after her common law husband died. Ms. Palmer's testimony is buttressed by evidence provided by PGW showing that shortly after Oliver Jackson's death, Ms. Palmer called PGW to see if her LIHEAP grant had been applied to the account.<sup>58</sup> PGW did not produce evidence to rebut Ms. Palmer's assertion that any meter bypass was done without her authorization or knowledge.

The facts of Ms. Palmer's case are similar to *Oduwole*. Both complainants testified that they had no knowledge of any theft of service, resided in and out of the property during the period at issue, were tenants with partners also residing in the property, and were both denied service by PGW at a new address without full payment of unauthorized use charges. Ms. Palmer should be treated like Ms. Oduwole, as an occupant who did benefit from unauthorized usage, but was not culpable in the theft and therefore should not be penalized for it.

Ms. Palmer utilized gas service during the time she resided at 4244 N. Hicks Street, and remained a tenant at that property until 2017. She did not pursue this Complaint to contest PGW's estimated charges for service due to a meter bypass. Ms. Palmer instead contends that PGW should not have denied her a payment arrangement or access to CRP at a new address and under the circumstances present; namely, where she was neither aware of nor a participant in any efforts undertaken to bypass PGW's gas meter. Ms. Palmer sought a payment arrangement from PGW in good faith, on multiple occasions. She testified (and PGW did not rebut) that she offered PGW \$2,000 in addition to grant money that she is eligible for to put toward the back

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<sup>57</sup> Further Hearing PGW Exhibit 1, pg 1-6.

<sup>58</sup> Further Hearing PGW Exhibit 16, pg. 5.

balance.<sup>59</sup> PGW would not accept her offer or the grant money that she was prepared to apply for because the charges were related to a theft.<sup>60</sup> The record also confirms that PGW failed to provide Ms. Palmer with information about her option to enroll in CRP.<sup>61</sup> PGW's conclusory denial of a payment arrangement and information about CRP to assist Ms. Palmer in establishing new service is contrary to the PUC's recent and directly applicable decisions cited above, all of which involve PGW allegations of unauthorized usage.

**C. PGW violated the Public Utility Code, the Commission's Regulations, and PGW's Tariff by refusing to furnish service to Complainant at 1763 N. Croskey until she paid full estimated charges for unauthorized use at 4244 N. Hicks Street.**

Ms. Palmer filed this Complaint because PGW refused to furnish service at her new residence without full payment of charges associated with a meter bypass that she did not authorize and of which she was not aware at a prior address. By improperly denying Ms. Palmer service and applying punitive policies related to allegations of theft, PGW violated its statutory obligation to provide reasonably continuous service under 66 Pa. C.S. §1501 of the Public Utility Code. Further, by denying service to Ms. Palmer, PGW violated 66 Pa. C.S. §1303 because it failed to act in accordance with Section 8.3.C of its own tariff, which prohibits the denial of service to someone who was not involved in theft of service. PGW incorrectly relied on 52 Pa. Code § 56.35(b), which applies only to applicants requesting to restore service at the property where the balance accrued, for its position that Ms. Palmer must pay in full charges for theft that accrued at a prior residence preceding and during which she was not PGW's customer of record. Because Ms. Palmer applied for service at a new address, was not involved in theft of service,

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<sup>59</sup> IER Hearing Tr. at 52:11; 50:4-10; Further Hearing Exhibit JE-1, Stipulation 17.

<sup>60</sup> Further Hearing Tr. at 341:20 through 343:1.

<sup>61</sup> Further Hearing Exhibit JE-1, Stipulation 18; Further Hearing, PGW Exhibit 16.

and is low income, she should have been offered service in accordance with the laws governing payment arrangements and customer assistance programs as discussed above.

- i. PGW failed to provide reasonably continuous service under 66 Pa.C.S. § 1501 by imposing punitive policies that effectively locked Ms. Palmer out of gas service due to a meter bypass that she did not authorize and of which she was not aware.

PGW violated its duty to provide reasonably continuous service under the Public Utility Code by requiring Ms. Palmer to pay in full estimated charges associated with the meter bypass at 4244 N. Hicks Street as a precondition to establishing new service at 1763 N. Croskey Street and by imposing upon Ms. Palmer additional punitive policies that apply only to individuals responsible for unauthorized use of gas service. Section 1501 of the Public Utility Code imposes a duty on every public utility to provide service that is “reasonably continuous and without unreasonable interruptions or delay.”<sup>62</sup> PGW’s policy to hold anyone associated with a property where a meter bypass is discovered responsible to pay all charges associated with that bypass prior to initiating service at a new address, irrespective of whether the individual authorized or was aware of the bypass, has unreasonably deprived Ms. Palmer of service in violation of Section 1501.

In this case, not only did PGW wrongfully deny Complainant service at her new address, but it also failed to take steps to identify theft of service by some other person for which it now seeks to hold Complainant responsible. This failure, like the failure to take photographs of meter bypasses, reflects the breakdown of PGW’s own internal systems and noncompliance with its own policies. PGW acknowledged that the systems it has in place to detect unauthorized usage inexplicably failed to identify such conditions at the property.<sup>63</sup> PGW records reveal no visit to

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<sup>62</sup> 66 Pa.C.S. § 1501.

<sup>63</sup> Further Hearing Exhibit JE-1, PGW Response to Palmer I-22.

the property after service was terminated to Mr. Jackson until Complainant called *nearly three years later* and requested that PGW come to the property.<sup>64</sup> Indeed, PGW testified that even when it received this call, reporting a smell of gas thought to be coming from the kitchen stove, PGW personnel remained ignorant as to whether the gas was supposed to be on or off.<sup>65</sup>

PGW also failed to comply with state law, which requires the utility to complete an annual cold weather survey at properties where service was terminated for nonpayment during the calendar year.<sup>66</sup> PGW admitted that the utility did not perform a cold weather survey in 2014, even though it terminated Oliver Jackson's service for nonpayment in July 2014.<sup>67</sup> If PGW had complied with its regulatory duties, it could have identified unauthorized use if it existed at that time. PGW's failure to comply with its policies actually contributed to the harm Ms. Palmer has endured since PGW's earlier discovery of a bypass could have permitted the correct persons to be held responsible. Yet, while PGW was aware that Ms. Palmer was the named tenant on the lease agreement, and had nonetheless discontinued service it had agreed to provide in Oliver Jackson's name, PGW made no effort whatsoever to contact Ms. Palmer directly.<sup>68</sup>

- ii. PGW violated 66 Pa.C.S. §1303 by refusing service to Complainant at a new address until she paid for estimated meter bypass charges at her prior address.

PGW violated its Tariff by refusing to provide Ms. Palmer with service at 1763 N. Croskey Street until she paid \$5,314.23 in estimated charges associated with the meter bypass at 4244 N. Hicks Street. 66 Pa.C.S. § 1303 requires PGW to adhere to its tariff, prohibiting it from charging rates other than as specified in its tariff. "Rate" is broadly defined and includes rules,

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<sup>64</sup> Further Hearing Tr. at 214: 5-10; See also Further Hearing PGW Exhibit 16, pg. 5.

<sup>65</sup> Further Hearing Tr. at 263:1-6.

<sup>66</sup> 52 Pa. Code § 56.100(h).

<sup>67</sup> Further Hearing Exhibit JE-1, PGW Response to Palmer II-3.

<sup>68</sup> Further Hearing PGW Exhibit 16, pg. 4-5.

regulations, practices, classifications and contracts affecting the amount PGW can charge.<sup>69</sup> A Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer.<sup>70</sup> In a formal complaint alleging a tariff violation, the burden of proof is on the complainant to show that the application of the existing tariff at issue is applied unreasonably.<sup>71</sup>

Even if the Public Utility Code or the Commission's Regulations could authorize the conduct PGW has engaged in, PGW's own Tariff prohibits it. While Section 8.3 of PGW's Tariff permits the utility to require a *Customer* to pay for charges associated with unauthorized use prior to reconnection, Section 8.3.C of PGW's Tariff specifically prohibits PGW from refusing to provide service to an *Applicant* who is not responsible for the unauthorized use of gas service.<sup>72</sup> Section 8.3.C of PGW's Tariff states that:

The Company shall not refuse to provide Gas Service to an Applicant who is not responsible for the damage or for the unauthorized use of Gas.

Under the Tariff, an Applicant is defined as follows:

Any person, corporation or other entity that (i) desires to receive from the Company Natural Gas or any other service provided for in this Tariff at a specific location, (ii) complies completely with all Company requirements for obtaining Natural Gas or any other service provided for in this Tariff, (iii) has filed and is awaiting Company approval of its application for service, and (iv) is not yet actually receiving from the Company any service provided for in this Tariff at such location. ***An applicant shall become a Customer for purposes of this Tariff only after the Applicant actually starts receiving the applicable service(s) from the Company under this Tariff on a permanent basis.*** An applicant for residential Gas Service shall also include any adult occupant whose name appears on the mortgage, deed or lease of the property for which residential utility service is requested.(Emphasis added).

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<sup>69</sup> See *PPL Elec. Utilities Corp. v. Pennsylvania Pub. Util. Comm'n*, 912 A.2d 386, 403 (Pa. Commw. Ct. 2006) ("Although our courts have held that a tariff is not a statute enacted by the legislature for purposes of determining the legal rate of post-judgment interest, *Equitable Gas Co. v. Wade*, 812 A.2d 715 (Pa.Super.2002), a tariff, like a statute, must be construed so as to give effect to all of its terms, and when the words are clear and free from ambiguity, they are not to be disregarded under the pretext of pursuing its spirit.").

<sup>70</sup> *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067, 63 Pa. Commw. 238 (Pa. Cmwlth. 1981); 66 Pa.C.S. § 316; *Kossmann v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997).

<sup>71</sup> *Id.*

<sup>72</sup> PGW Gas Service Tariff, Section 8.3.C Service.

In the instant proceeding, Ms. Palmer is an Applicant as defined by PGW's Tariff. The record shows that Ms. Palmer desired to receive service from PGW and requested service for 1763 N. Croskey Street on September 24, 2018.<sup>73</sup> Because Ms. Palmer has demonstrated that she did not willfully or knowingly permit unauthorized use at 4244 N. Hicks Street, PGW cannot refuse to provide her with service at 1763 N. Croskey Street consistent with its Tariff. Similarly, Section 6.1.B.1 of PGW's Tariff recognizes an exception to its unauthorized use definition. Under 6.1.B.1, "a residential occupant who has taken or accepted utility service without knowledge or approval of the utility (without self-turn-on, a meter bypass or meter tampering) is not a person who has committed "unauthorized use" or "used Gas Service without PGW authorization" within the meaning of this Tariff." Ms. Palmer falls within this exception because she did not authorize, and was not aware of, a meter bypass at 4244 N. Hicks Street. PGW refused to establish service and instead demanded payment of \$5,314.23 before the utility would establish service in Ms. Palmer's name.<sup>74</sup> Under its Tariff, PGW was not permitted to refuse service to Ms. Palmer at her new address and doing so constitutes a violation of Section 1303 of the Public Utility Code.

- iii. PGW and the Bureau of Consumer Services incorrectly relied on 52 Pa. Code § 56.35(b) when it required Ms. Palmer to pay the meter bypass charges from 4244 N. Hicks Street prior to establishing service in her name at 1763 N. Croskey Street.

Complainant alleges that PGW has impermissibly conditioned establishment of service at a new address upon payment of charges associated with a meter bypass that occurred at a previous address. PGW has maintained that because Complainant resided at the 4244 N. Hicks Street when the charges accrued, she must pay estimated charges in full prior to initiating service

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<sup>73</sup> Further Hearing Exhibit JE-1, Stipulation 12.

<sup>74</sup> Further Hearing Exhibit JE-1, Stipulations 13-14.

at a new address. In Complainant's Informal Complaint with the Commission, the Bureau of Consumer Services (BCS) agreed with PGW, basing its determination primarily on 52 Pa. Code § 56.35(b).<sup>75</sup> This Regulation allows the utility to require payment of an outstanding balance as a condition of the furnishing of service "if the applicant resided at the property for which service is requested . . . ."<sup>76</sup> This Regulation does not apply here because Complainant has requested service at a new address.

Complainant testified that she is requesting service at a different address than the one where the meter bypass was discovered. As discussed above, Sections 1405, 1407, and 1410.1 of the Public Utility Code give Complainant, who is low-income, the right to establish service at a new address without paying the full balance.<sup>77</sup> Under §§ 1405 & 1407(c)(2)(iii), PGW was required to offer Ms. Palmer a payment arrangement of up to 24 months to pay off the balance that she owed. Under §1410.1(1)-(2), PGW was also required to inform Ms. Palmer about its customer assistance programs and refer her to be enrolled. PGW's denial of service and failure to provide Ms. Palmer a payment arrangement or access to CRP violated these Regulations.

#### IV. CONCLUSION

For all the foregoing reasons, Complainant requests that the Commission:

- (a) declare that the Complainant has proved by a preponderance of evidence that she did not willfully or knowingly permit a meter bypass at 4244 N. Hicks Street in Philadelphia;
- (b) declare that in requiring Complainant to pay in full charges associated with a meter bypass at 4244 N. Hicks Street in Philadelphia, which she did not authorize and of which she was not aware, as a precondition to establishing service at 1763 N. Croskey Street in

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<sup>75</sup> IER Hearing Exhibit P-2.

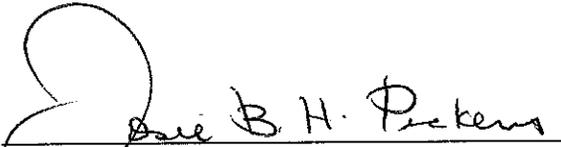
<sup>76</sup> 52 Pa. Code § 56.35(b)(1).

<sup>77</sup> 66 Pa.C.S. §§ 1405 & 1407 (c)(2)(iii).

Philadelphia, PGW has violated its duty to provide reasonably continuous service under 66 Pa.C.S. § 1501;

- (c) declare that in denying Complainant's requests for a payment arrangement to pay charges associated with a meter bypass at 4244 N. Hicks Street in Philadelphia, which she did not authorize and of which she was not aware, PGW has violated 66 Pa. C.S. § 1407(c)(2)(iii) and 56.191(c)(2)(iv);
- (d) declare that in refusing to permit Complainant to enroll in PGW's Customer Assistance Program prior to payment of charges associated with an meter bypass at 4244 N. Hicks Street in Philadelphia, Respondent has violated 66 Pa. C.S. §§ 1410.1(1)-(2) ;
- (e) declare that in requiring Complainant to pay in full charges associated with a meter bypass at 4244 N. Hicks Street in Philadelphia, which she did not authorize and of which she was not aware, as a precondition to establishing service at 1763 N. Croskey Street PGW has violated Section 8.3.C of its Tariff and 66 Pa.C.S. § 1303; and,
- (f) grant such other relief as is appropriate, just and in the public interest.

Respectfully submitted,



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June 18, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>TOMISHA PALMER</b>	:		
Complainant		:	
		:	
		:	F-2018-3006197
		:	
		:	
<b>PHILADELPHIA GAS WORKS</b>		:	
Respondent		:	

**CERTIFICATE OF SERVICE**

**Re: Tomisha Palmer v. Philadelphia Gas Works, Docket No. F-2018-3006197**

I hereby certify that I have this day served a copy of the foregoing **Initial Brief** in the manner and upon the persons listed below:

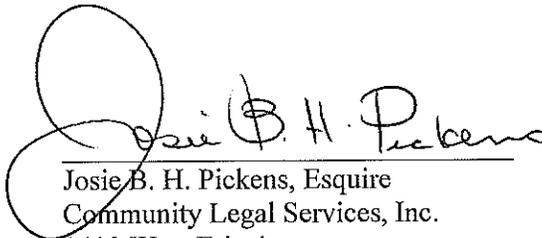
By First Class U.S. Mail, postage prepaid, and e-mail as indicated:

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Dated this 18<sup>th</sup> day of June, 2019

  
\_\_\_\_\_  
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