

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tomisha Palmer	:	
	:	
v.	:	F-2018-3006197
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Tomisha Palmer against Philadelphia Gas Works (PGW or Respondent) because she failed to meet her burden of demonstrating that PGW’s actions constituted a violation of the Public Utility Code, the Commission’s regulations, or PGW’s own Commission-approved tariff when it required her to pay an outstanding balance from a prior address before initiating service in her name at a new address.

HISTORY OF THE PROCEEDING

On November 26, 2018, Tomisha Palmer (Complainant) filed a formal Complaint (Complaint) against PGW with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant indicated that “[t]he utility is threatening to shut off my service or has already shut off my service” and “[i]ncorrect charges are on my bill.” The Complainant further indicated that PGW is holding her responsible for charges that accrued as a result of theft at a prior address, 4244 N. Hicks Street, Philadelphia, PA. The Complainant wants PGW to remove these charges from her bill and to provide her with service at her new address.

On December 18, 2018, Respondent filed an Answer admitting that it issued a shut off notice for the service at 4244 N. Hicks Street (service address). Respondent denied that there are incorrect charges on the bill for service at the service address.

By Hearing Notice dated December 20, 2018, a hearing was scheduled for February 4, 2019 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on December 28, 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 February 4, 2019. The Complainant appeared *pro se*. The Respondent appeared and was represented by Laureto Farinas, Esq., who was prepared to present the testimony of two witnesses. Following settlement discussions, the Complainant requested a continuance of the hearing to allow her time to secure legal representation. I granted that request on the record. Tr1. 8.¹

By Hearing Notice dated February 4, 2019, the Initial In-Person Hearing was rescheduled for March 21, 2019 at 10:00 a.m.

On February 21, 2019, Mr. Farinas filed a Withdrawal of Appearance on behalf of PGW with the Commission. On that same date, Graciela Christlieb, Esq., filed a Notice of Appearance on behalf of PGW with the Commission.

On February 26, 2019, Josie B.H. Pickens, Esq. filed a Notice of Appearance on behalf of the Complainant with the Commission.

¹ Three separate transcripts were generated throughout the course of this proceeding. Since the pagination of the February 4, 2019 hearing runs from pages 1 to 10 and the pagination for the March 21, 2019 and May 7, 2019 hearings runs from pages 1 to page 364, the transcript for the February 4, 2019 hearing will be designated as “Tr1.” and the transcript for the March 21, 2019 and May 7, 2019 hearings will be designated as “Tr2.”

On February 27, 2019, the Complainant served Tomisha Palmer's Interrogatories and Requests for Production of Documents, Set I on PGW.

On March 8, 2019, PGW served Philadelphia Gas Works' Objections to Tomisha Palmer's Interrogatories and Requests for Production of Documents – Set I on the Complainant.

On March 13, 2019, Ms. Pickens contacted me via email, with a copy to Ms. Christlieb, to request a continuance of the March 21, 2019 hearing. Ms. Pickens indicated that she required the continuance of the hearing to conduct discovery and to submit an amended Complaint.² Ms. Pickens further indicated that she had contacted Ms. Christlieb about her request, and that Ms. Christlieb indicated that PGW would not oppose the Complainant's continuance request. Additionally, Ms. Pickens informed me of her intent to file, by week's end, a Petition for Interim Emergency Relief to establish service at the Complainant's new address.

I subsequently advised the parties that, since the Complainant would be filing a Petition for Interim Emergency Relief by the end of the week, I would not cancel the March 21, 2019 hearing, since “[a]n interim emergency order may not be issued until the presiding officer holds a hearing on the merits of the petition ... within 10 days of the filing of the petition.” 52 Pa. Code § 3.6a. Thus, I advised that, since I would be required to hold a hearing within 10 days of such a filing, I would keep the March 21, 2019 hearing date for that purpose.

On March 14, 2019, the Complainant filed a Petition for Interim Emergency Order, requesting the Commission to issue an Interim Emergency Order compelling PGW to establish gas service at 1763 N. Croskey Street in Philadelphia, PA, without requiring her to pay for meter bypass and/or meter tampering charges at 4244 N. Hicks Street as a precondition for service. The Petition was filed and signed by Ms. Pickens.

Separately, on March 14, 2019, Lydia R. Gottesfeld, Esq. filed a Notice of Appearance on behalf of the Complainant with the Commission.

² The Complainant never filed an amended complaint.

By Hearing Notice dated March 15, 2019, a Further In-Person Hearing was scheduled for May 7, 2019 at 10:00 a.m. to address the merits of the Complaint.

On March 18, 2019, the Complainant filed a Motion to Compel Philadelphia Gas Works to Answer Complainant Tomisha Palmer's Interrogatories and Requests for Production of Documents, Set I.

On March 19, 2019, PGW filed Philadelphia Gas Works' Answer to Petition for Interim Emergency Order.

A hearing was held on March 21, 2019 at 10:00 a.m. to address the Complainant's Petition for Interim Emergency Order. Ms. Pickens and Ms. Gottesfeld appeared on behalf of the Complainant. Ms. Palmer also appeared and testified. The Complainant offered the following exhibits during the March 21, 2019, hearing:

- P-1 Permanency Review Order, dated 9/18/18
- P-2 BCS Decision #3655035, Issued 10/15/18

Both documents were admitted into the record.

Ms. Christlieb appeared on behalf of PGW. Tiffany Jones, a PGW Senior Customer Review Officer, testified on behalf of the Respondent. The Respondent offered the following exhibits during the March 21, 2019, hearing:

- R-1 Residential Lease for 4244 N. Hicks Street, dated 9/26/12
- R-2 Five Permanency Review Orders, all dated 3/19/19
- R-3 Utility Service Agreement for Oliver Jackson, dated 11/19/13
- R-4 Order Detail for Oliver Jackson at 4244 N. Hicks Street
- R-5 Trouble Orders Contact dated 6/27/17 at 4244 N. Hicks Street

All of the Respondent's exhibits were admitted into the record.

On March 25, 2019, PGW filed its Answer of Philadelphia Gas Works to Complainant's Motion to Compel Answers to Tomisha Palmer's Interrogatories and Requests For Production of Documents – Set I.

By Order dated March 28, 2019, I denied the Complainant's Petition for Interim Emergency Order. The Order certified the denial of relief to the Commission for consideration and disposition in accordance with 52 Pa. Code § 5.305, pertaining to interlocutory review of a material question submitted by a presiding officer.³

On March 29, 2019, the Complainant filed her Petition for Leave to Withdraw Motion to Compel Philadelphia Gas Works to Answer Complainant Tomisha Palmer's Interrogatories and Requests for Production of Documents, Set I.

On April 2, 2019, PGW filed its Application for Subpoena Ad Testificandum and Duces Tecum Addressed to PECO.

On April 12, 2019, the Complainant filed her Objection to Philadelphia Gas Works' Application for Subpoena Ad Testificandum and Duces Tecum.

By Interim Order dated April 12, 2019, I granted the Complainant's Petition to Withdraw Motion to Compel.

By Interim Order dated April 24, 2019, I denied PGW's Application for Subpoena Ad Testificandum and Duces Tecum Addressed to PECO.

The May 7, 2019, hearing convened as scheduled. The Complainant appeared and was again represented by Ms. Pickens and Ms. Gottesfeld. The Complainant testified during the hearing. The Respondent appeared and was again represented by Ms. Christlieb who presented the testimony of the following witnesses: William Schwartz, a Real Estate Manager for Bricks Management; Idriss Byrd, a driver for PGW; Nicholas Simeo, a PGW Supervisor; and Jessica Glace, a PGW Senior Customer Review Officer. The Respondent offered the following exhibits during the May 7, 2019, hearing:

³ Commission regulations at 52 Pa. Code § 5.305(f) provide that the "[f]ailure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmance of the decision of the presiding officer." The Commission did not act upon the certified question within 30 days of its receipt of the certified question.

PGW-1	PECO Statement of Account for Tomisha Palmer
PGW-2	IOTA Trust Document for 4244 N. Hicks Street
PGW-3	Residential Lease for 4244 N. Hicks Street, dated 9/26/12
PGW-4	Two Photos of Gas Meter at 4244 N. Hicks Street
PGW-5	PGW Field Information for 4244 N. Hicks Street dated 6/27/17
PGW-6	PGW Field Information for 4244 N. Hicks Street dated 6/27/17
PGW-7	Turn On Service Order for 4244 N. Hicks Street for Tomisha Palmer dated 9/26/12
PGW-8	Turn Off Service Order for 4244 N. Hicks Street for Tomisha Palmer dated 6/27/13
PGW-9	Turn On Service Order for 4244 N. Hicks Street for Oliver Jackson dated 11/19/13
PGW-10	Turn On Report for Oliver Jackson dated 11/19/13
PGW-11	Turn Off Service Order for 4244 N. Hicks Street for Oliver Jackson dated 7/30/14
PGW-12	Turn Off Report for Oliver Jackson
PGW-13	Trouble Orders Contact dated 6/27/17 at 4244 N. Hicks Street
PGW-14	PGW Technician Contact Report dated 6/27/17
PGW-15	Meter Test Results for Meter # 2034935
PGW-16	Customer Contacts for Tomisha Palmer
PGW-17	Customer Contact Turn On Screen Shot for Oliver Jackson dated 11/15/13
PGW-18	Customer Contact Cold Weather Survey for Tomisha Palmer dated 11/15/13
PGW-19	Customer Contact Customer Responsibility Program for Oliver Jackson dated 11/21/13
PGW-20	Bypass Calculations for 4244 N. Hicks Street

All of PGW's exhibits were admitted into the record. The parties jointly offered an exhibit (JE-1) which was also admitted into the record.

During the hearing, Ms. Pickens requested to submit a brief in this matter. Accordingly, the Complainant was given until June 11, 2019 to submit a brief, and the Respondent was given until July 11, 2019, to submit a reply brief.⁴

The Record in this matter consists of the transcript from the March 21, 2019, hearing on the Complainant's Emergency Petition, the transcript from the May 7, 2019, hearing (for a total of 363 transcribed pages), and twenty-eight exhibits (including the seven exhibits admitted during the March 21, 2019, hearing and the twenty-one exhibits admitted during the May 7, 2019, hearing).

⁴ Due to delays in receipt of the transcript, these dates were subsequently modified to allow the parties time to review the transcript and draft their briefs. By email dated June 6, 2019, I informed the parties that the Complainant's Initial Brief was due on or before June 18, 2019, and Respondent's Reply Brief was due on or before July 19, 2019.

The record closed on July 19, 2019, upon my receipt of PGW's Reply Brief.

FINDINGS OF FACT

1. The Complainant in this case is Tomisha Palmer.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant was a tenant at 4244 N. Hicks Street in Philadelphia, PA (service address) from September 26, 2012, to approximately July 2017. Tr2. 193, 231; JE-1.
4. The Complainant was the sole named tenant on the lease for the service address. Tr2. 231, 255; R-1.
5. The lease was a one-year lease to start, and month-to-month after the initial year. Tr2. 256; PGW Exh. 3.
6. The Complainant had a PGW account in her name at the service address from September 26, 2012 to June 27, 2013. Tr2. 193, 232-233, 292-293; JE-1, PGW Exhs. 7 & 8.
7. On June 27, 2013, PGW terminated the Complainant's gas service for the service address at the curb due to non-payment. Tr2. 193, 233, 293; JE-1, PGW Exh. 8.
8. Oliver Jackson was the Complainant's partner. Tr2. 193; JE-1.
9. Oliver Jackson was a contractor/handyman by trade. Tr2. 238, 242; Comp. Exh. 1.
10. Oliver Jackson had a PGW account for service in his name at the service address from November 19, 2013 to July 30, 2014. Tr2. 193, 213, 233, 293; JE-1, PGW Exh. 9.

11. When Mr. Jackson initiated service in his name at the service address, PGW had to physically turn the gas on at the curb. Tr2. 294, 336; PGW Exhs. 9 & 10.

12. When the PGW technician turned on the gas at the service address on November 19, 2013, he performed all safety checks, including a visual inspection of the meter. Tr2. 296-297; PGW Exh. 10.

13. PGW terminated Oliver Jackson's gas service for the service address at the curb box on July 30, 2014 due to non-payment. Tr2. 193, 234, 298, 334, 339; JE-1, PGW Exh. 11.

14. Following termination, no one had active service in their name until the customer who moved in after the Complainant vacated the service address. Tr2. 328.

15. Oliver Jackson died on February 6, 2017. Tr2. 193, 214-215, 217; Comp. Exh. 1.

16. On May 2, 2017, the Complainant contacted PGW to ask if the low income home energy assistance program (LIHEAP) credit was applied to her account. Tr2. 323-324; PGW Exh. 16.

17. On May 2, 2017, PGW advised the Complainant that the account had not been in her name since 2013, and that she should contact LIHEAP to see if she can have LIHEAP applied. Tr2. 323-324; PGW Exh. 16.

18. Between May 2, 2017 and June 27, 2017, the Complainant did not contact PGW again regarding an account for service at the service address. Tr2. 325; PGW Exh. 16.

19. As of June 27, 2017, the Complainant was living at the service address with her six children. Tr2. 224.

20. On June 27, 2017, representatives from the Pennsylvania State Department of Human Services (DHS) visited the service address to perform a walk-through. Tr2. 224, 228.

21. June 27, 2017 was the first time that DHS performed a walk-through of the Complainant's home. Tr2. 241.

22. Philadelphia Police were also at the service address on June 27, 2017. Tr2. 224.

23. A DHS worker observed the meter bypass on the gas meter at the service address. Tr2. 61, 227-228.

24. The DHS worker instructed the Complainant to contact PGW. Tr2. 58, 229.

25. The Complainant contacted PGW to report a gas odor at the service address. Tr2. 264, 300; PGW Exhs. 5, 13.

26. Idriss Byrd was a PGW Field Service Technician in 2017. Tr2. 261.

27. On June 27, 2017, PGW sent Mr. Byrd to the service address to investigate a reported inside gas leak. Tr2. 262; PGW Exh. 5.

28. The gas meter at the service address is located next to a basement window and is visible from the bottom step of the basement stairs. Tr2. 258; PGW Exh. 4.

29. While investigating the reported gas leak at the service address, Mr. Byrd discovered that the gas was on, that the meter had been removed and placed on the basement floor, and that a flex line had been installed connecting the inlet to the outlet allowing gas to flow into the property unmetered. Tr2. 193, 264-266, 274, 276; JE-1.

30. Mr. Byrd observed this meter bypass as soon as he opened the basement door. Tr2. 279.

31. Mr. Byrd shut off the gas service, leaving it safe, and notified his dispatch that he would need an unbilled usage investigation. Tr2. 267.

32. Mr. Byrd informed the Complainant that he shut the gas off due to theft. Tr2. 61, 230, 268, 273; PGW Exh. 6.

33. A DHS worker who was at the service address on June 27, 2017 also informed the Complainant that PGW shut the gas service off due to theft. Tr2. 60, 226.

34. Mr. Byrd left a post-termination notice with the Complainant advising that service was shut off due to theft. Tr2. 273.

35. Mr. Byrd retrieved the gas meter from the floor and turned it in to PGW. Tr2. 269.

36. Mr. Byrd retrieved the flex connector hose from the service address. Tr2. 269.

37. While Mr. Byrd was present at the service address, DHS personnel and the police were there as well. Tr2. 268.

38. Mr. Byrd did not take any pictures of the meter/bypass when he discovered it due to the commotion going on with DHS, the police and the Complainant's children. Tr2. 271, 276-277.

39. Nicholas Simeo is a Supervisor with PGW's Revenue Protection Unit. Tr2. 281, 283.

40. The Revenue Protection Unit handles cases of theft and meter bypasses. Tr2. 283.

41. PGW does not have a policy regarding routine maintenance and/or inspection of meters and AMR devices. Tr2. 283.

42. PGW does not have a system in place to detect theft through a bypass, instead relying on tips of such theft, which it then follows up with a site visit. Tr2. 286.

43. PGW holds evidence of theft for one year, after which it is discarded. Tr2. 288.

44. PGW does not currently have possession of the meter or flex connector hose that were removed from the service address since more than one year passed before the Complainant filed her Complaint. Tr2. 288-289.

45. The Complainant had access to the gas meter at the service address. Tr2. 57, 230.

46. PGW calculated that \$5,314.23 worth of gas was used at the service address from July 30, 2014 to June 27, 2017. Tr2. 193; JE-1.

47. When determining bypass calculations, PGW uses 12 consecutive months of historic usage to determine the amount owed. Tr2. 338.

48. PGW determined the amount of the bill it assessed to the Complainant based on historical usage at the service address under the customer account prior to that of the Complainant since neither the Complainant nor Mr. Jackson had 12 consecutive months of usage on their respective accounts. Tr2. 319, 338; PGW Exh. 20.

49. On June 29, 2017, the Complainant contacted PGW to inquire about restoration terms. Tr2. 325; PGW Exh. 16.

50. PGW initially informed the Complainant that she would have to pay approximately \$6,600.00 for the gas used. Tr2. 220.

51. PGW subsequently reduced the amount the Complainant would have to pay to \$5,314.23. Tr2. 220.

52. The Complainant has lived at 1763 N. Croskey Street in Philadelphia since August 1, 2018. Tr2. 25, 34.

53. As of the date of the evidentiary hearing, the Complainant never had a PGW account for service at 1763 N. Croskey Street. Tr2. 193; JE-1.

54. On August 1, 2018, the Complainant informed PGW that she may be applying for service at 1763 N. Croskey Street. Tr2. 193; JE-1.

55. PGW demanded payment of the \$5,314.23 unbilled usage balance from the service address before it would establish service in the Complainant's name at 1763 N. Croskey Street. Tr2. 193; JE-1.

56. On August 17, 2018, the Complainant requested a payment agreement from PGW on the \$5,314.23 balance that PGW required to establish service at 1763 N. Croskey Street. Tr2. 193; JE-1.

57. PGW would not permit the Complainant to enroll in a payment arrangement for the \$5,314.23. Tr2. 193; JE-1.

58. On September 24, 2018, the Complainant visited a PGW district office and requested service at 1763 N. Croskey Street. Tr2. 193; JE-1.

59. PGW again demanded payment of \$5,314.23 to establish service in the Complainant's name at 1763 N. Croskey Street. Tr2. 193; JE-1.

60. PGW would not permit the Complainant to enroll in PGW's Customer Responsibility Program prior to receiving payment of the \$5,314.23 that PGW has demanded to initiate service in her name at 1763 N. Croskey Street. Tr2. 193; JE-1.

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, the 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, the 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. Cmwlth. 2001).

The Complainant indicated in her Initial Brief that, due to the receipt of financial assistance from an unidentified City agency, she was able to obtain gas service from PGW in her name at 1763 N. Croskey Street effective May 29, 2019. Complainant's Brief at 3. Nevertheless, the Complainant indicated that she still seeks a ruling in her favor from the Commission that PGW violated the Public Utility Code, Commission regulations, and PGW's own Tariff by denying and delaying her service at her new address. As discussed below, the Complaint is denied.

Theft of Service – 4244 N. Hicks Street

The record in this matter established that theft of service occurred at the service address. The record reflects that Oliver Jackson was the last customer of record at the service address, having service from November 19, 2013 until July 30, 2014. Tr2. 193, 213, 233, 293; JE-1, PGW Exh. 9. The record further reflects that PGW terminated Oliver Jackson's gas service for the service address at the curb box on July 30, 2014 due to non-payment. Tr2. 193, 234, 298, 334, 339; JE-1, PGW Exh. 11. Following termination of service in Mr. Jackson's name, the record demonstrates that no one had active service in their name until the customer who moved in after the Complainant vacated the service address. Tr2. 328.

As of June 27, 2017, the Complainant was living at the service address with her six children. Tr2. 224. On that date, representatives from DHS were present at the service address to perform a walk-through. Tr2. 224, 228. This was the first time that DHS performed a walk-through of the Complainant's home. Tr2. 241. A DHS worker observed the meter bypass on the gas meter and instructed the Complainant to contact PGW. Tr2. 58, 61, 227-229. The Complainant subsequently contacted PGW to report a gas odor at the service address. Tr2. 264, 300; PGW Exhs. 5, 13.

PGW dispatched Idris Byrd, a Field Service Technician, to the service address to investigate the reported gas leak. Tr2. 261-262; PGW Exh. 5. Upon his arrival, Mr. Byrd

discovered the gas on and a meter bypass. Tr2. 193, 264-265; JE-1. More specifically, Mr. Byrd discovered that the meter had been removed and placed on the floor, and that a flex line had been installed connecting the inlet to the outlet allowing gas to flow into the property unmetered. Tr2. 266, 274, 276. Although Mr. Byrd should have taken pictures of the meter/bypass as required by PGW policy, in this instance he failed to do so due to the commotion going on with DHS, the police and the Complainant's children. Tr2. 271, 276-277. Mr. Byrd shut off the gas service, leaving it safe, and notified his dispatch that he would need an unbilled usage investigation at the service address. Tr2. 267. Mr. Byrd also informed the Complainant that he shut off the gas due to theft and left a post-termination notice advising that service was shut off due to theft. Tr2. 268, 273; PGW Exh. 6.

The record establishes that the Complainant was a tenant at the service address from September 26, 2012 to approximately July 2017. Tr2. 193, 231; JE-1. The Complainant resided at the service address while this theft of service occurred. However, I do not believe that the Complainant perpetrated, or was aware of, the theft.

On May 2, 2017, the Complainant contacted PGW to inquire if LIHEAP was applied to her account. Tr2. 323-324; PGW Exh. 16. At that time, a PGW representative advised the Complainant that the account had not been in her name since 2013, and that she should contact LIHEAP to see if she can have LIHEAP applied. Tr2. 323-324; PGW Exh. 16. Although the Complainant did not ask about switching the service into her name or even what the outstanding balance was, the fact that she called to inquire about LIHEAP being applied to her account is convincing that she was not aware of the ongoing theft of service. While I do find it questionable that the Complainant never informed PGW that she was not receiving any bills at the service address (either in her or Mr. Jackson's names) for the gas service she was using, I find it unlikely that someone actively engaging in theft of service would call to see if LIHEAP was being applied to their account. Therefore, while I do find that the Complainant is responsible for the balance that accrued as a result of the theft (as discussed below) since she resided at the service address during the relevant period and benefitted from the service, I do not find that she was the cause of, or aware of, the theft.

Application for Service – 1763 N. Croskey Street

The Complainant advanced several arguments alleging that PGW improperly required her to pay the entire outstanding balance before furnishing service to 1763 N. Croskey Street, her current address. The Complainant argued: that she was eligible for a payment arrangement and enrollment in PGW's Customer Assistance Program (known as Customer Responsibility Program, or CRP) at 1763 N. Croskey Street because she did not willfully or knowingly authorize the meter bypass at 4244 N. Hicks Street; and that PGW violated the Public Utility Code, the Commission's Regulations, and its own tariff by refusing to furnish service to her at 1763 N. Croskey Street until she paid the full estimated charges for unauthorized use at 4244 N. Hicks Street. These arguments will be addressed below.

Complainant's Eligibility for a Company-Issued Payment Arrangement/ CRP

The Complainant argued that, since she did not willfully or knowingly misuse gas service, PGW should have provided her with a payment arrangement to enable her to pay down this unauthorized usage balance, and should have enrolled her in its CRP pursuant to 66 Pa. C.S. §§ 1405(b)(1), 1407(c)(2)(iii), 1410.1(1)-(2) and 52 Pa. Code § 56.191(c)(2)(iv). Although I concluded that the Complainant was not aware of the meter bypass based upon the telephone call she made in May 2017, I cannot conclude that PGW improperly denied the Complainant a payment arrangement or enrollment in CRP.

PGW discovered an obvious active meter bypass at the service address when the gas was supposed to be off, at a time when the Complainant was residing at the service address with her children, using the gas and not paying for it. Moreover, the Complainant was the sole tenant named on the lease for the service address. And although it came to light during the hearing that the Complainant called PGW to inquire about LIHEAP being applied to her account, it is also clear that the Complainant never notified PGW that she was not receiving any bills for service, and that she was not paying for the gas she was using. Under these circumstances, PGW had sufficient reason to conclude that the Complainant was actively engaged in theft of service at the service address.

In *Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015)(*Fassett*), 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.” Order at 8. The Commission explained further:

PGW is not required under applicable law to issue an amortization/payment arrangement on amounts owed resulting from fraud or theft. When a public utility issues a make-up bill for previously unbilled service due to a billing error, meter failure, or leakage, the utility is required under Section 56.14 of our Regulations, 52 Pa. Code § 56.14, to explain the bill and to make a reasonable attempt to amortize the bill. However, Section 56.14, does not apply when the previously unbilled service is due to fraud or theft of service. Consequently, PGW is not obligated under Section 56.14 to make a reasonable attempt to amortize the back bill here.

Id. at 9. As previously noted, PGW had sufficient reason to conclude that the Complainant was the cause of, or aware of, the theft of service. Pursuant to the Commission’s Order in *Fassett* and PGW’s reasonable conclusion that the Complainant was responsible for the gas theft, whether or not she was aware of it, I conclude that PGW did not violate the Public Utility Code or the Commission’s regulations by not offering the Complainant a payment arrangement or enrolling her in its CAP program.

Complainant’s Eligibility Pursuant to the Public Utility Code, Commission Regulations and PGW’s Tariff.

The Complainant argued that PGW violated its duty to provide reasonably continuous service under 66 Pa.C.S. § 1501 by requiring her to pay, in full, the estimated charges associated with the meter bypass at 4244 N. Hicks Street as a precondition to establishing new service at 1763 N. Croskey Street. The Complainant further argued that PGW violated 66 Pa.C.S. § 1303 (regarding adherence to tariffs) because it failed to act in accordance with Section 8.3.C of its own tariff. Additionally, the Complainant argued that PGW incorrectly relied on 52 Pa.Code § 56.35(b), since that section applies to applicants requesting to restore service at the property where the balance accrued and she requested service at a new address. Lastly, the Complainant argued that PGW failed to comply with Commission regulations at 52 Pa.Code § 56.100 because it did not

perform a cold weather survey in 2014, even though it terminated Oliver Jackson’s service for nonpayment in July 2014.

PGW is required by law to provide the Complainant with adequate and reasonable service with respect to her gas service. Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501, provides, in relevant part:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

Interpreting this provision in *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 478 A.2d 947 (Pa. Cmwlth. 1984), the Commonwealth Court stated:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer’s complaint, to require any action by the utility.

Id. at 949 (footnote omitted).

The statutory definition of “service” is to be broadly construed.⁵ *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). In applying the facts to the law, the issue becomes whether PGW’s actions as described in the Complaint rise to the level of inadequate service that constitutes a violation of the Public Utility Code.

⁵ “Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . 66 Pa. C.S.A. § 102.

The Complainant argued that 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, regardless of responsibility or awareness of the theft, has unreasonably deprived her of gas service in violation of 66 Pa.C.S. § 1501. To address this argument, I must first determine whether PGW's requirement that the Complainant pay the outstanding balance from 4244 N. Hicks Street prior to furnishing service at 1763 N. Croskey Street was improper.

The Complainant argued that 52 Pa.Code § 56.35(b)(1) allows the utility to require payment of an outstanding balance as a condition of furnishing service "if the applicant resided at the property for which service is requested" The Complainant argued that this regulation is inapplicable to her situation since she is requesting service at a new address. Complainant's Brief at 19.

Regarding an applicant's responsibility for the payment of an outstanding balance, Commission regulations provide, in pertinent part, as follows:

- (a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.
- (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 public utility was not aware of because of fraud or theft on the part of the applicant.

* * *

52 Pa.Code §§ 56.35 (a)-(b)(1).

I agree that 52 Pa.Code § 56.35(b)(1) is inapplicable to the Complainant's situation since she was seeking to initiate service at a new address rather than seeking to reestablish service at the service address. However, I do find that the Commission's regulation at 52 Pa.Code § 56.35(a) is applicable. This provision is broader and allows the public utility to require, as a condition of furnishing residential service to an applicant, "the payment of *any* outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly." *Id.* (emphasis added).

In the present case, the record demonstrates that the last customer of record prior to the discovery of the meter bypass was Orville Jackson, and his account for service was terminated on July 30, 2014 for non-payment. Tr2. 193, 234, 298, 334, 339; JE-1, PGW Exh. 11. Following the termination of Mr. Jackson's account for non-payment, no one had active service in their name until the customer who moved in after the Complainant vacated the service address. Tr2. 328. PGW is holding the Complainant responsible for charges that accrued at the service address between July 30, 2014 and June 27, 2017, a period when PGW was not furnishing residential gas service under anyone's account or billing anyone, since the gas was being stolen. The record further demonstrates that the Complainant was a tenant at 4244 N. Hicks Street in Philadelphia from September 26, 2012 to approximately July 2017. Tr2. 193, 231, 255; R-1, JE-1.

Commission regulations define an occupant as "[a] natural person who resides in the premises to which public utility service is provided." 52 Pa.Code § 56.2. The record in this case established that the Complainant, although not the last PGW customer of record, was an occupant (and sole named tenant on the lease) at the service address during the period of unauthorized usage and benefited from the unauthorized gas usage. While I understand the Complainant's argument that 52 Pa.Code § 56.35(b)(1) is inapplicable to her situation, 52 Pa.Code § 56.35(a) does apply to her situation. PGW acted in accordance with 52 Pa.Code § 56.35(a) when it advised the Complainant that she would have to pay the outstanding balance from the service address before PGW would furnish service to her at her new address.

The Complainant also argues that even if the Public Utility Code or the Commission's regulations authorize PGW's conduct, 66 Pa.C.S. § 1303 and PGW's own tariff prohibits it. The Complainant references Rule 8.3.C of PGW's Gas Service Tariff – Pa.P.U.C. No. 2 which provides “[t]he 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.”

Regarding adherence to tariffs, the Public Utility Code provides, in pertinent part, the following:

No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part.

66 Pa.C.S. § 1303.

A utility's Commission-approved tariff (list of services, rules for service and rates for service) has the force of law and is binding on the utility and its customers. *Stiteler v. Bell Telephone Co. of Pennsylvania*, 32 Pa.Comm. 319, 379 A.2d 339 (1977); *Brockway Glass Co. v. Pa. Public Util. Comm'n*, 63 Pa.Comm. 238, 437 A.2d 1067 (1981); *Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n*, 663 A.2d 281 (Pa.Cmwlth. 1995).

Tariff provisions approved by the Commission are *prima facie* reasonable. *Lynch v. Pa. Pub. Util. Comm'n*, 140 Pa.Comm. 599, 594 A.2d 816 (1991); *alloc. den.*, 529 Pa. 670, 605 A.2d 335 (1992), 66 Pa.C.S. §316.

Rule 8.3.C of respondent's Gas Service Tariff – Pa P.U.C. No. 2 enjoys all of these legal presumptions.

The Complainant maintains that Rule 8.3.C prohibits PGW from refusing her service since she was not responsible for the unauthorized use of gas. This is incorrect. As explained above, although I believe the Complainant was unaware of the unauthorized use of

gas, she is still responsible for the unauthorized use of gas as the tenant and beneficiary of the gas. Furthermore, PGW did not refuse to provide her with gas service. Rather, and as permitted by 52 Pa.Code § 56.35(a), PGW required the Complainant to satisfy a sizeable outstanding balance as a condition of furnishing residential service to her at her new address. It was the Complainant's inability to pay this balance that prevented her from establishing service at her new address.

Additionally, I do not agree with the Complainant's strict reading of Rule 8.3.C of PGW's tariff. Such a loophole would allow any similarly situated applicant to establish service in their name and potentially avoid liability for the balance for the gas used, from which they benefitted. Under such circumstances, the liability for the unpaid balance would then fall to PGW's regularly paying customers, since they will be ultimately responsible for repayment of this debt should the Complainant fail to pay it back. Accordingly, I cannot conclude that PGW violated the Public Utility Code or its Commission-approved tariff by requiring payment of this outstanding balance as a condition of furnishing residential service at her new address. Moreover, I cannot conclude that PGW has unreasonably deprived the Complainant of gas service in violation of 66 Pa.C.S. § 1501.

The Complainant also alleged that PGW failed to comply with the Commission's regulation at 52 Pa.Code § 56.100(h), which requires PGW to complete an annual cold weather survey at properties where service was terminated for nonpayment during the calendar year. The Complainant noted that PGW admitted that it did not perform a cold weather survey in 2014, even though it terminated Oliver Jackson's service for nonpayment in July 2014.

Regarding surveys of terminated heat related accounts, the Commission's regulations provide as follows:

For premises where heat related service has been terminated within the past year for any of the grounds in § 56.81 (relating to authorized termination of service) or § 56.98, electric distribution utilities, natural gas distribution utilities and Class A water distribution utilities shall, within 90 days prior to December 1, survey and attempt to make post-termination personal contact with the occupant or a responsible adult at the premises and in good

faith attempt to reach an agreement regarding payment of any arrearages and restoration of service.

52 Pa.Code § 56.100(h).

Section 3314(a) of the Public Utility Code, 66 Pa.C.S. § 3314(a), provides as follows:

(a) GENERAL RULE.-- No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained *unless brought within three years from the date at which the liability therefore arose*, except as otherwise provided in this part.

(emphasis added). This provision provides a general limitation period of three years for any action under the Code, except as otherwise provided. See, *Duquesne Light Co. v. Pennsylvania Pub. Util. Comm'n*, 611 A.2d 370 (Pa. Cmwlth. 1992). The statute of limitations can be tolled by the filing of an informal complaint with the Commission.

PGW terminated Mr. Jackson's gas service on July 30, 2014. Pursuant to 52 Pa.Code § 56.100(h), PGW should have conducted a cold weather survey by December 1, 2014. Since PGW did not conduct the cold weather survey, the liability for its inactivity arose on December 1, 2014. Pursuant to 66 Pa.C.S. § 3314(a) of the Public Utility Code, any Complaint raising PGW's failure to conduct a cold weather survey should have been filed by December 1, 2017. The Complainant filed her informal Complaint in this matter on September 25, 2018. JE-1; PGW Exh. 16. The Complainant filed her formal Complaint on November 26, 2018. The Complainant filed both her informal and formal Complaints after the December 1, 2017 deadline. Accordingly, the Complainant's attempt to raise this issue in this proceeding is barred by the statute of limitations.

For the aforementioned reasons, I cannot conclude that PGW's actions constituted a violation of the Public Utility Code, Commission regulations or PGW's own Commission-approved tariff. Accordingly, the Complainant's Complaint is denied 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. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501.
5. A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa.Code § 56.35 (a).
6. Complaints must be filed within three years from the date that the liability arose. 66 Pa.C.S. § 3314.
7. The Complainant failed to carry her burden of demonstrating that PGW's actions constituted a violation of the Public Utility Code, the Commission's regulations, or PGW's own Commission-approved tariff.

8. The Complainant failed to carry her burden of demonstrating that PGW provided her with inadequate service in violation of 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Tomisha Palmer against Philadelphia Gas Works at Docket No. F-2018-3006197 is denied; and

2. That the docket at Docket No. F-2018-3006197 be marked closed.

Date: October 7, 2019

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge