

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TOMISHA PALMER	:	
Complainant	:	
	:	F-2018-3006197
	:	
PHILADELPHIA GAS WORKS	:	
Respondent	:	

EXCEPTIONS OF TOMISHA PALMER - COMPLAINANT

I. INTRODUCTION

On September 25, 2018, Tomisha Palmer (“Complainant”) filed an informal complaint with the Public Utility Commission’s Bureau of Consumer Services (“BCS”) because Philadelphia Gas Works (PGW) refused to provide her service at 1763 N. Croskey Street until she paid \$6,571.15 in estimated charges associated with a meter bypass at her prior address, 4244 N. Hicks Street.

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) contesting PGW’s refusal to provide her with service at 1763 N. Croskey Street and averring that she did not cause, and was not aware of, a meter bypass at 4244 N. Hicks Street. Hearings were held on March 21 and May 7, 2019.¹ At the hearings Complainant produced substantial evidence that she did not authorize and was not

¹ I.D. at 4-6. The March 21 hearing addressed Complainant’s Petition for Interim Emergency Order, in which Complainant sought an emergency order to establish service at 1763 N. Croskey Street during the pendency of this Complaint. At the time of filing her Complaint, Ms. Palmer’s five children were in custody of the Philadelphia Department of Human Services (DHS) and unable to reunify with their mother at 1763 N. Croskey Street until gas service was established at the property. The ALJ denied Complainant’s Petition and the Commission declined to act upon the denial of relief.

aware of a meter bypass at 4244 N. Hicks Street.² Complainant established that she was a tenant at 4244 N. Hicks Street during the period in which unauthorized usage occurred, from July 30, 2014 to June 27, 2017.³ Complainant proved that she was not PGW's customer at 4244 N. Hicks Street immediately preceding the discovery of the meter bypass.⁴ Oliver Jackson was the last known customer prior to the discovery of the meter bypass.⁵ Oliver Jackson was Complainant's significant other and died in February 2017.⁶ Complainant was not aware of the meter bypass until it was discovered by PGW on June 27, 2017, after Mr. Jackson died, and after Complainant contacted PGW and requested that someone come check on the smell of gas.⁷ Complainant also proved that PGW refused to provide her with a payment arrangement or enrollment in its customer assistance program, the Customer Responsibility Program ("CRP"), until Complainant paid all meter bypass charges for 4244 N. Hicks Street.⁸

After the conclusion of the hearings, but prior to the issuance of an Initial Decision, Complainant obtained grant assistance to pay off the estimated bypass charges.⁹ Upon receipt of payment of these charges, PGW established service in Complainant's name at 1763 N. Croskey Street.¹⁰ In her Initial Brief, Complainant informed the ALJ that the bypass charges had been paid and service established in her name at 1763 N. Croskey Street.¹¹ She further submitted that she continued to seek a determination that PGW violated the requirements of the Public Utility

² Initial Brief of Complainant, June 18, 2019.

³ Further Hearing Exhibit JE-1, Stipulation 3.

⁴ *Id.* at Stipulation 7.

⁵ *Id.*

⁶ *Id.* at Stipulation 9; Further Hearing Exhibit C-1.

⁷ Initial Brief of Complainant at 5; Further Hearing PGW Exhibit 16, pg. 5.

⁸ Further Hearing Exhibit JE-1, Stipulation 17-18. Complainant contends that PGW's unauthorized use policies are overbroad and overly punitive. Complainant presented uncontested testimony that PGW declined her offer of a \$2,000 down payment to establish a payment arrangement on the meter bypass charges. Tr2. at 52:9-17. In addition, PGW's witness testified that the utility would not accept funds from LIHEAP or UESF to pay charges associated with meter tampering. Tr2. at 342:18 through 343:1.

⁹ Initial Brief of Complainant at 3.

¹⁰ *Id.*

¹¹ *Id.*

Code, Commission Regulations and PGW's Tariff by refusing her service at her new address and by preventing her from accessing a payment arrangement or PGW's customer assistance program, which would have helped her to afford the estimated charges.¹²

On October 7, 2019, Administrative Law Judge Christopher P. Pell issued an Initial Decision ("I.D.") dismissing the Formal Complaint.¹³ In the decision, the ALJ concluded that Complainant did not cause, and was not aware of, the meter bypass at her prior residence; yet, notwithstanding this conclusion, the ALJ found that Complainant failed to meet her burden to prove that PGW's actions violated the law and that she should not have been denied service and access to customer assistance or a payment arrangement.

Pursuant to 52 Pa. Code § 5.533, Complainant hereby files exceptions to the Initial Decision, set forth below ("Exceptions"). In these Exceptions, Complainant maintains that the ALJ erred in finding the Complainant did not prove that PGW's actions violated the Public Utility Code, Commission Regulations, and PGW's Tariff. Further, the ALJ erred in failing to correctly apply those relevant facts supported by substantial evidence in determining that Complainant, who was not responsible for or aware of a meter bypass, should nonetheless be treated the same as a customer who is aware of and actually engages in a meter bypass. The ALJ's holding contravenes recent PUC formal complaint decisions involving PGW which were identified in Complainant's brief and in which the Commission extended payment arrangements to similarly situated PGW customers.

II. EXCEPTIONS

Exception No. 1 . The ALJ erred in finding that the Complainant did not carry her burden of demonstrating that PGW's actions violated the Public Utility Code, Commission Regulations, or PGW's Tariff.

¹² *Id.*

¹³ The Initial Decision was posted on the Commission's electronic filing system, and served on the parties, on October 15, 2019.

The Complainant proved that PGW's denial of her request for service at 1763 N. Croskey Street until she paid the full balance for charges associated with a meter bypass constituted a violation of the Public Utility Code, the Commission's Regulations, and PGW's Tariff.¹⁴ Complainant showed that she did not effectuate a meter bypass and that she was unaware of the existence of such a bypass at her prior residence.¹⁵ As a result, PGW could not preclude her from entering a payment arrangement or enrolling in PGW's customer assistance program. The ALJ erred in failing to find that Complainant carried her burden and was entitled to relief.

The ALJ correctly determined that the Complainant did not cause, and was not aware of, a meter bypass at her prior residence, 4244 N. Hicks Street.¹⁶ Complainant convincingly testified that she did not cause and was not aware of any meter bypass at that service address.¹⁷ Her testimony was supported by PGW's customer records, which revealed that two months before the discovery of the bypass, the Complainant contacted PGW to inquire into the status of a LIHEAP grant and was informed by a PGW representative that the account had not been in her name since 2013.¹⁸ The ALJ reasoned that it was "unlikely that someone actively engaging in theft of service would call to see if LIHEAP was being applied to their account."¹⁹ The ALJ was persuaded by these facts and found Complainant was unaware of a bypassed meter.²⁰

Notwithstanding his own determination, the ALJ improperly held that it was reasonable for PGW to deny the Complainant's request for a payment arrangement or enrollment in CRP

¹⁴ Initial Brief of Complainant at 14-19.

¹⁵ Initial Brief of Complainant at 3-8.

¹⁶ I.D. at 15.

¹⁷ Tr2. at 35:5 through 34:3; Tr2. at 213:1 through 214:10.

¹⁸ Further Hearing PGW Exhibit 16, pg. 5.

¹⁹ I.D. at 15.

²⁰ *Id.*

because, “PGW had sufficient reason to conclude that the Complainant was the cause of, or aware of, the theft of service.”²¹ The ALJ erred in applying a standard that does not exist – whether or not PGW had a sufficient reason at the time it denied service to Complainant does not affect her ability to carry her burden, as she has done, on the record of this proceeding.²² As discussed in detail below, assessing the reasonableness of PGW’s actions is not limited to a determination of whether PGW is seeking payment from someone who was connected to the premises at the time of unauthorized usage. Rather, relevant analysis is whether, based on the preponderance of the evidence on the full record, and applying the requirements of the Public Utility Code, Commission Regulations and PGW’s Tariff, PGW could permissibly condition service upon such full payment. The ALJ’s conclusion that PGW had sufficient reason to treat Complainant as if she knew of and/or actively engaged in meter tampering is directly at odds with the clear finding, supported by PGW records, that Complainant *did not* know of such tampering. Crucially, that is the burden Complainant was required to carry in demonstrating that she was, in fact, entitled to service from PGW and access to customer assistance and a payment arrangement.

Having concluded that the Complainant did not effectuate the bypass and was unaware of its existence, the ALJ errs in failing to find that she carried her burden. Indeed, because she did carry her burden to show she was not involved in the theft of service (as discussed more fully in Exception 2), the ALJ should have next evaluated her claim that she was impermissibly denied access to customer assistance or a payment arrangement under the Public Utility Code or Commission Regulations.

²¹ I.D. at 17.

²² Indeed, PGW cannot *reasonably* reach a conclusion that an applicant can be denied service on terms which, as set forth below, specifically conflict with its Tariff obligations.

Because Ms. Palmer has income below 135% of the Federal poverty level, she was 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.²³ PGW deprived Ms. Palmer of these customer protections when it conditioned her service at 1763 N. Croskey Street upon full payment of estimated charges from 4244 N. Hicks Street. Accordingly, Ms. Palmer also carried her burden to show that PGW impermissibly prevented her from accessing customer assistance.

Regarding payment arrangements, the Public Utility Code authorizes the Commission to establish payment arrangements between a public utility and an applicant. 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.²⁴ 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.²⁵ 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.²⁶ Pursuant to PGW's current Commission approved Universal Service and Energy Conservation Plan, CRP is available to *all* low-income residential customers with a gross household income and size at or below 150% FPL.²⁷ When an applicant contacts PGW to make a payment arrangement, the Public Utility Code requires PGW to provide

²³ Tr2. at 49:1-4.

²⁴ 66 Pa.C.S. § 1405(b)(1).

²⁵ 66 Pa.C.S. § 1407(c)(iii); 52 Pa. Code § 56.191 (c)(2)(iv).

²⁶ *Id.*

²⁷ *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 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.

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.²⁸ Because PGW undertook none of these actions, Complainant again carried her burden to show she was entitled to relief and a decision in her favor.

PGW did not permit the Complainant to utilize the customer assistance options available under the Public Utility Code and Commission Regulations solely because of its punitive policies of denying this assistance to individuals associated with unauthorized use of service, irrespective of whether the individual caused, permitted or even knew of the existence of unauthorized use of service. PGW's application of its punitive policies in this case violated PGW's Tariff and the Public Utility Code's requirement that utilities provide service that is "reasonably continuous and without unreasonable interruptions or delay."²⁹

The Complainant proved that PGW violated its Tariff when the utility refused to provide service to Complainant at 1763 N. Croskey until she paid, in full, charges associated with a meter bypass that she did not cause or authorize at 4244 N. Hicks Street and by denying her a payment arrangement or enrollment in CRP, which would have allowed her to afford to pay the bypass charges.³⁰ PGW's Tariff states that the utility "shall not refuse to provide Gas Service to an Applicant who is not responsible for the damage or for the unauthorized use of Gas." This Tariff provision is intended to protect innocent parties, like Complainant, from PGW's punitive policies that apply only to persons who are responsible for unauthorized use of gas service. This provision of PGW's Tariff was thoroughly reviewed in PGW's 2006 rate case. In PGW's 2006

²⁸ 66 Pa.C.S. §§ 1410.1(1)-(2).

²⁹ 66 Pa.C.S. § 1501.

³⁰ Initial Brief of Complainant at 16-18.

rate case, the Commission denied PGW's attempt to remove this provision from its Tariff.³¹ Low income advocates opposed PGW's effort, arguing, in relevant part:

Section 8 of PGW's current Tariff contains a provision a[t] Section 8.3.D that provides that PGW "shall not refuse to provide Gas service to an Applicant who is not responsible for the damage or for the unauthorized use of Gas." This provision should be read in tandem wi[t]h other provisions of Section 8, in which the Company asserts broad authority to withhold gas service from premises where it claims unauthorized use has occurred. [...]

Section 8.3.D ensures that current or prior customers and current or prior occupants who are not responsible for the unauthorized use may not be denied service solely because they were a customer or occupant or otherwise associated with premises where unauthorized use occurred.³²

PGW responded by stating:

AA is concerned that PGW's proposal to eliminate Section 8.3.D of its current tariff will empower PGW to hold innocent persons responsible for tampering or theft. Assuming that PGW would act in this manner even though to do so would be a violation of current law and Commission regulations, is inappropriate.³³

In its exceptions to the ALJ's recommended decision in the 2006 rate case, PGW further clarified that this Tariff provision is intended to protect innocent parties from liability due to unauthorized usage caused by a third party. PGW argued that "to accept the RD's position is to assume that PGW intends to hold non-responsible persons liable for the misdeeds of associates."³⁴ The ALJ's recommendation in the rate case, to deny PGW's proposal to eliminate this tariff language, was

³¹ Pa. P.U.C. v. Philadelphia Gas Works, Docket No. R-00061931, Opinion and Order, entered September 29, 2007, at 105-07.

³² *Id.* Main Brief of Action Alliance of Senior Citizens of Greater Philadelphia and Tenant Union Representative Network at 47-48. Internal citations omitted. In 2006-07, the PGW Tariff section 8.3.D contained identical language to the section 8.3.C at issue here: "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."

³³ *Id.* Reply Brief of Philadelphia Gas Works at 94.

³⁴ *Id.* Exceptions of Philadelphia Gas Works at 55.

upheld by the Commission, over PGW's exception.³⁵ The Commission has expressly endorsed the prohibition on liability contained in Section 8.3.C and denied PGW's attempt to remove this provision from its Tariff.³⁶ The Commission agreed with the ALJ in PGW's rate case that the Tariff section provided clarification of consumer protections that are not explicit in Commission statutes or regulations.³⁷ In Ms. Palmer's case, we submit that the ALJ failed to apply the consumer protection contained in PGW's Tariff, as it has been interpreted by the PUC, by finding that it did not apply to an applicant who did not cause or know of the meter bypass at her prior residence.

The ALJ found that there was no violation of PGW's Tariff because Complainant was a tenant at the property and a beneficiary of the gas use associated with the meter bypass.³⁸ The ALJ disagreed with the Complainant's "strict reading" of PGW's Tariff stating that Complainant's reading could result in liability for the unpaid balance falling on PGW's regularly paying customers who would be responsible for repayment of the debt if Complainant failed to pay back the charges associated with the unauthorized use.³⁹ The Complainant does not propose a strict reading of PGW's Tariff but rather the plain and natural reading as confirmed by PGW and the PUC in PGW's 2006 rate case. PGW's Tariff should be read plainly and consistent with the Commission's prior orders, including its order in PGW's 2006 rate case, and recent formal complaint decisions involving PGW, like those discussed below, that distinguish between an individual who effectuated or knew of the existence of unauthorized use at their residence and an individual who consumed gas service without knowledge or authorization of the underlying

³⁵ Pa. P.U.C. v. Philadelphia Gas Works, Docket No. R-00061931, Opinion and Order, entered September 29, 2007, at 105-07.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *I.D.* at 22.

³⁹ *Id.*

unauthorized use. The ALJ erred in finding that PGW's Tariff gives the utility permission to broadly deny customer assistance to anyone who resided in a property where unauthorized use of service occurred. Section 8.3.C. requires PGW to furnish service to an applicant who is not responsible for causing or permitting unauthorized use of service. PGW violated its Tariff when it refused to provide service to Complainant at her new residence and denied her requests for customer assistance that would have permitted her to afford PGW's payment demand.

PGW's conduct is also a violation of its duty to provide service that is "reasonably continuous and without unreasonable interruptions or delay" as required by the Public Utility Code.⁴⁰ The Commission has previously found a violation of Section 1501 with respect to the inadequacy of PGW's meter tampering policies.⁴¹ Here, PGW violated its Tariff and disregarded evidence within its possession, which clearly substantiated Complainant's claim that she was unaware of a meter bypass at 4244 N. Hicks Street. PGW's harsh and punitive tactic of depriving Complainant of affordable payment options unreasonably delayed Complainant's access to service at her new residence by requiring that Complainant meet the full payment demand for charges associated with a meter bypass that she did not cause and of which she was not aware. Complainant suffered substantial harm as a result of PGW's unaffordable payment demand, which left her unable to restore service that she needed in order to reunify with her minor children at her new residence.⁴² In addition, Complainant was unable to restore natural gas service for heating, hot water, and cooking gas for more than eight months, including cold winter months, between the filing of her Informal Complaint and her receipt of grant assistance

⁴⁰ 66 Pa.C.S. § 1501.

⁴¹ *Thomas DiAntonio v. PGW*, No. F-2017-2634058, 2018 WL 2985956 (July 13, 2018). The ALJ found that PGW failed to provide adequate and reasonable service in violation of the Public Utility Code when it failed to investigate monthly reports of meter tampering over a ten year period.

⁴² Tr2. at 41:11 through 47:20; IER Hearing Exhibit P-1.

that allowed her to initiate service at 1763 N. Croskey Street.⁴³ PGW further violated its duty to provide service by denying Complainant's requests for customer assistance, including a payment arrangement and enrollment in CRP, which would have helped her to afford PGW's payment demand. The record establishes that Ms. Palmer carried her burden in all respects, and the ALJ erred in concluding otherwise.

Exception No. 2 – The ALJ made an error of law by assessing whether PGW acted reasonably in holding Ms. Palmer responsible for the theft of gas service at 4244 N. Hicks Street.

The ALJ made an error of law in concluding that Ms. Palmer was not eligible for a payment arrangement or enrollment in CRP for the unauthorized use charges at issue. In reaching this conclusion, the ALJ relied on the Commission's order in *Fassett v. Philadelphia Gas Works*, No. F-2014-2408541, 2015 WL 1957867 (Mar. 26, 2015). The ALJ improperly construed the Commission's ruling in *Fassett* and failed to consider other recent PUC Orders identified by Complainant in support of her Complaint. In finding that PGW reasonably denied Ms. Palmer a payment arrangement, the ALJ made an error of law.

The Commission's decision must be based on substantial evidence in the record.⁴⁴ Substantial evidence is relevant evidence that a reasonable person would find sufficient to support a finding of fact.⁴⁵ More is required than a mere trace of evidence or a suspicion of a fact that is sought.⁴⁶ A negative inference, supporting a mere suspicion, will not constitute substantial evidence.⁴⁷ On the basis of the record in this Complaint, the substantial evidence demonstrates

⁴³ Tr2. at 34:10 through 41:7.

⁴⁴ *Mill v. Commw., Pa. Pub. Util. Comm'n*, 67 Pa. Commw. 597, 447 A.2d 1100 (1982).

⁴⁵ *Direnzo Coal Co. v. Dep't of Gen. Servs.*, 825 A.2d 773, 775 (Pa. Commw. Ct. 2003); *Rabinowitz v. Unemployment Comp. Bd. of Rev.*, 324 A.2d 825 (Pa. Cmmw. Ct. 1974).

⁴⁶ *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. Crwlth. 1984).

⁴⁷ *Kyu Son Yi, DVM v. State Bd. of Veterinary Med.*, 960 A.2d 864, 875 (Pa. Cmmw. Ct. 2008).

that Ms. Palmer was not aware of the existence of a tampered meter.⁴⁸ The only evidence on the record to the contrary raises no more than a mere suspicion that she could have been aware of such tampered meter. While the ALJ correctly found that Complainant was not aware of such a tampered meter, on the basis of the whole record, the ALJ nonetheless failed to properly apply that finding to the standard articulated by the PUC in past PGW unauthorized use cases.

In the Initial Decision, the ALJ erroneously determines that Ms. Palmer was not eligible for a payment arrangement because PGW adequately connected her to the situs of the unauthorized use, due to her residence at the property and her name being listed as the sole tenant on the lease.⁴⁹ On that basis, the ALJ concluded she was responsible for the theft, whether or not she was aware of it.⁵⁰ The ALJ improperly looks to whether PGW's assessment of Ms. Palmer's residency and occupancy was reasonable, rather than applying the substantial evidence on the record that showed she was not involved in the theft of service. The ALJ determined that because Ms. Palmer was associated with the property and there was a tampered meter at the property, PGW acted reasonably in holding her responsible and therefore she should not have access to a payment arrangement or be eligible to enroll in PGW's customer assistance program. The ALJ's Initial Decision is inconsistent with other PUC orders and contrary to PGW's Tariff.

The Commission has determined 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.⁵¹ This rule aligns with PGW's Tariff, which also prohibits PGW from penalizing customers who were not

⁴⁸ Initial Brief of Complainant at 3-8.

⁴⁹ I.D. at 16.

⁵⁰ I.D. at 17.

⁵¹ *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).

responsible for the theft of service.⁵² Although Commission decisions are not precedential, the Commission is required to render consistent opinions. It should follow, distinguish, or overrule its own precedent.⁵³

The ALJ bases his decision on *Fassett*, quoting the commission, “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.”⁵⁴ In *Fassett*, the Commission declined to grant a payment arrangement because it found the complainant was involved in the theft of service.⁵⁵ To make this determination, the Commission considered the facts on the record and found that the complainant’s statement that he lived without gas at the property was not supported by evidence.⁵⁶

The ALJ disregards cases identified by Complainant in which the PUC has explicitly granted payment arrangements when it has determined that the individual from whom PGW requests payment of unauthorized usage charges was not responsible for the theft of service. In *Oduwole v. PGW*, No. F-2018-3001419, 2019 WL 1506839 (Mar. 28, 2019), the Commission reversed the ALJ’s initial decision holding Ms. Oduwole responsible for upfront payment of all unauthorized usage charges because she was connected to the property during the period of unauthorized use. It found that she was not involved in the tampering and granted her a payment arrangement.⁵⁷ Similarly, in *Davis v. PGW*, No. F-2016-2573100, 2017 WL 6018105 (Oct. 26, 2017), the ALJ granted Ms. Davis a payment arrangement for unauthorized usage charges that occurred at the service address because she was not “willfully or knowingly engaged in the theft

⁵² See PGW Gas Service Tariff § 8.3.C.

⁵³ *Bell Atl. v. Pa. PUC*, 672 A.2d 352 (Pa. Cmwlth. 1995); *Pennsylvania Trout v. Dep’t of Env’tl. Prot.*, 863 A.2d 93, 107 n. 5 (Pa. Cmwlth. 2004).

⁵⁴ I.D. at 17 (citing *Fassett v. Philadelphia Gas Works*, No. F-2014-2408541, 2015 WL 1957867 (Mar. 26, 2015)) (emphasis added; internal quotations omitted).

⁵⁵ *Fassett v. PGW*, No. F-2014-2408541 at 6.

⁵⁶ *Id.* at 5-6.

⁵⁷ *Oduwole v. PGW*, No. F-2018-3001419, 2019 WL 1506839, at 1 (Mar. 28, 2019).

of gas.”⁵⁸ In *Oduwole* and *Davis*, both complainants were deemed responsible for the *charges*, but not the *theft*; therefore, the Commission found they could access the consumer protections available to them to establish service. In both cases, the Commission examined the facts on the record and held that payment arrangements are available to complainants who are not involved in the theft.

Oduwole, *Fassett*, and *Davis* create a clear and consistent rule: payment arrangements on unauthorized use charges should be available for customers who were not involved in the theft of service.⁵⁹ In each of these cases, the inquiry was not limited to whether PGW was reasonable in connecting the complainant to the premises where the unauthorized use occurred, but required close and careful consideration of the record evidence as to whether or not the complainant was involved in the actual theft of service. In Ms. Palmer’s case, the ALJ found she was not involved in the actual theft, but failed to properly apply that fact in reaching an Initial Decision. Because Ms. Palmer did not cause and was unaware of the theft of service, the ALJ erred in upholding PGW’s denial of service to her and PGW’s refusal to provide her access to a payment arrangement or its customer assistance program.

The ALJ’s determination that PGW had sufficient reason to connect Ms. Palmer to the service address for purposes of assessing unauthorized usage charges does not constitute relevant evidence that she was responsible for or aware of the existence of a tampered meter such that she should be required to make full payment as a condition of acquiring service. To the contrary, the ALJ found as fact, as Ms. Palmer claimed, that she was not the cause of, or even aware of, the

⁵⁸ *Davis v. PGW*, No. F-2016-2573100, 2017 WL 6018105, at 9 (Oct. 26, 2017).

⁵⁹ The Commission has granted payment arrangements to customers who unknowingly benefited from unauthorized use, notwithstanding the possibility that any uncollectible expenses associated with these charges would be paid by other ratepayers. In Ms. Palmer’s case, the ALJ erred in denying consumer protections to the Complainant simply because of a concern for other ratepayers, which was not substantiated by the record and which is always a possibility whenever PGW or the Commission authorizes a payment arrangement. I.D. at 22.

theft at issue.⁶⁰ This conclusion was bolstered by the account records at 4244 N. Hicks Street, which were in the possession of PGW.⁶¹ But the ALJ's decision specifically *disregards* the substantial evidence of Complainant's lack of knowledge of the existence of gas theft in reaching the conclusion that PGW could treat Complainant as if she did have specific knowledge of and/or authorize the meter tampering.⁶²

Instead of focusing on the relevant evidence of Complainant's lack of knowledge of the existence of the bypass, the ALJ focused on insufficient and/or irrelevant evidence. First, the ALJ apparently (and without adequate fact findings) relied upon insufficient evidence that the meter bypass was "obvious."⁶³ Second, the ALJ relied upon irrelevant evidence that Ms. Palmer was the leaseholder at the property, who resided there at the property at the time the meter bypass was discovered.⁶⁴ The ALJ failed to acknowledge other evidence on the record, including that Mr. Jackson, not Ms. Palmer, was the last customer of record in the property,⁶⁵ that Ms. Palmer testified that the gas bill was Mr. Jackson's responsibility,⁶⁶ that Ms. Palmer was in charge of the electric bill at the property and regularly made payments during the same time period,⁶⁷ and that the call she made to PGW to inquire about her LIHEAP grant was just a few months after the death of Mr. Jackson.⁶⁸

⁶⁰ I.D. at 15.

⁶¹ *Id.*

⁶² I.D. at 17 ("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.") (emphasis added.).

⁶³ I.D. at 16.

⁶⁴ *Id.*

⁶⁵ *Id.* at 8.

⁶⁶ Tr2. At 77.

⁶⁷ Tr2. At 76-77; Further Hearing, Exhibit I, pg 1-6.

⁶⁸ I.D. at 8.

The ALJ's statement that the meter bypass was "obvious" is not supported by substantial evidence.⁶⁹ The only evidence relied upon by the ALJ that the meter bypass was obvious is testimony by the PGW technician who discovered the bypass. This testimony is not supported by evidence showing what the meter bypass looked like. Nor does this testimony support an inference that a layperson with no experience dealing with gas meters, such as Ms. Palmer, would notice or conclude that the meter had been bypassed.⁷⁰ In fact, this testimony is directly undermined by PGW's admission that its technician failed to comply with PGW policy and did not take pictures of the meter bypass or document any reason for deviating from the requirements PGW imposes when a meter bypass is found.⁷¹ The statement that there was an "obvious" meter bypass is not substantial evidence that Ms. Parker knew or should have known of the existence of a meter bypass, much less that she is responsible for such a meter bypass.

Moreover, PGW was aware that Ms. Palmer had called PGW in May 2017 to inquire about application of a LIHEAP grant, as that information was contained in its customer service system for the account.⁷² As such, PGW should have made the same conclusion that the ALJ did – that Ms. Palmer was not involved in, or aware of, theft at the property. PGW should not be held to a different, lower standard, than the Commission. Thus, the ALJ's conclusion that PGW had sufficient reason to believe that Ms. Palmer was involved in the theft at the Property is erroneous because it is not based on substantial evidence.

It is worth noting that the posture of this case varies from the cases cited above. By the time the ALJ rendered his decision, Ms. Palmer had already established service at her new address. As discussed on the record in this case, Ms. Palmer's need for service was urgent, and

⁶⁹ Initial Brief of Complainant at 6-8.

⁷⁰ Further Hearing Exhibit JE-1, PGW Response to Palmer I-23; Tr2. at 271:11-23; 311:18 through 314:4.

⁷¹ Tr2. at 271:11-23; 311:18 through 314:4.

⁷² Further Hearing PGW Exhibit 16, pg. 5.

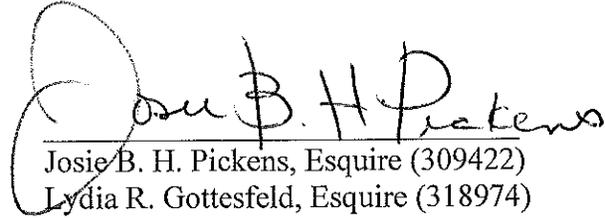
with grant assistance, she paid down the charges requested. Even though Ms. Palmer is not currently requesting a payment arrangement, the Commission should issue an Order consistent with previous Orders and find that Ms. Palmer was eligible for a payment arrangement and other low-income consumer protections available under the law because she was not involved in the theft. To hold otherwise would fail to correct PGW practices which are inconsistent with its Tariff and the plain language of PUC decisions⁷³ and sanction PGW's punishment of innocent third parties who may have benefitted from unauthorized use of which they were not aware. Permitting PGW to punish any party associated with an address at which such theft occurred is a purely punitive action which results in lack of access to gas service for individuals who have done nothing wrong. While these individuals may, in some circumstances, bear financial responsibility for the estimated usage charges, they should not be barred from accessing service on reasonable and affordable terms.

III. CONCLUSION

For all of the foregoing reasons, Complainant Tomisha Palmer respectfully requests that the Commission grant Complainant's Exceptions and find that the Complainant has sustained her burden in proving that PGW violated the Public Utility Code, the Commission's Regulations, and PGW's Tariff by refusing to provide the Complainant with a payment arrangement or enrollment in CRP to resolve a balance associated with a meter bypass at a prior address, which Complainant did not effectuate and of which she was not aware.

⁷³ It is worthwhile to note that all of the recent PUC cases that Complainant and her counsel have identified, and which establish that a payment arrangement is available to a complainant not involved in unauthorized use (even if such complainant bears financial responsibility for the estimated charges), are cases involving PGW. This suggests PGW is engaged in an ongoing practice of disregarding the consumer rights of innocent customers and applicants who have not caused or been aware of theft of service.

Respectfully submitted,

A handwritten signature in black ink that reads "Josie B. H. Pickens". The signature is written in a cursive style with a large, looping initial "J".

Josie B. H. Pickens, Esquire (309422)
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November 4, 2019



BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

TOMISHA PALMER
Complainant

F-2018-3006197

PHILADELPHIA GAS WORKS
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 Exceptions of Tomisha Palmer – Complainant in the manner and upon the persons listed below:

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

Administrative Law Judge Christopher Pell
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Dated this 4th day of November, 2019

[Handwritten signature of Josie B. H. Pickens]

Josie B. H. Pickens, Esquire
Community Legal Services, Inc.
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