

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ilya Chachkes	:	
	:	
v.	:	F-2019-3008759
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision dismisses Ilya Chachkes' Complaint against Respondent, Philadelphia Gas Works. Mr. Chachkes failed to meet his burden of establishing that Philadelphia Gas Works erred in transferring his tenant's balance to his account after the discovery of a foreign load at the Service Address.

HISTORY OF THE PROCEEDING

On March 18, 2019, Ilya Chachkes (Complainant or Mr. Chachkes) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that PGW's findings of foreign load at his property were erroneous because his tenant, Andrea Bullock, rented and occupied the entire building. As relief, Mr. Chachkes requests that the Commission order PGW to remove Ms. Bullock's outstanding balance which was placed under his name upon the utility's determination that foreign load existed on Ms. Bullock's service line.

This Complaint is a timely appeal of a decision issued by the Commission's Bureau of Consumer Services at BCS Case No. 3616555, which dismissed his informal complaint.

On April 15, 2019, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated April 22, 2019, notified the parties that the hearing for this case was scheduled on Wednesday May 29, 2019, at 10:00 a.m.

A Prehearing Order was issued on May 2, 2019, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On May 23, 2019, counsel for PGW filed a Motion requesting the continuance of the scheduled hearing. As reason for requesting the continuance, counsel cited the unavailability of a crucial witness on that particular date. The Motion indicated that Mr. Chachkes was informed of the request for a continuance and had no objections to it.

By Order dated May 28, 2019, I granted PGW's Motion and cancelled the May 29, 2019 hearing.

A Hearing Notice dated May 29, 2019, notified the parties that the hearing for this case was rescheduled for Friday, July 12, 2019, at 10:00 a.m.

A second Prehearing Order was issued on June 26, 2019, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

By July 1, 2019, both Complainant and Respondent had submitted written requests for continuance of the hearing scheduled on July 12, 2019. Their requests were granted

and by Hearing Notice dated July 31, 2019, the parties were notified that the initial hearing in this matter was rescheduled for October 7, 2019.

A third Prehearing Order was issued on September 19, 2019, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on October 7, 2019. Ilya Chachkes appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of: Nashira Ramos, who is a field service representative for PGW in charge of investigating high bill complaints and claims of foreign load by PGW customers (Tr. 30); and Jessica Glace, who is a senior customer review officer for PGW in charge of investigating formal and informal complaints filed with the Commission. Tr. 58. The Respondent sponsored five exhibits, which were admitted into the record.

The record in this matter closed upon receipt of my copy of the transcript on November 6, 2019.

FINDINGS OF FACT

1. Complainant is Ilya Chachkes, who resides at 3420 Woodward Road, Hunting Valley, PA 19006. Tr. 7.
2. Respondent is Philadelphia Gas Works.
3. Mr. Chachkes owns the property at 1200 East Cheltenham Avenue, Philadelphia, PA 19124 (Service Address). Tr. 7-8, PGW Exhibit 3.
4. The Service Address is a corner row house with a basement that is partially above ground. PGW Exhibit 1.

5. The basement of the Service Address has a separate entry from the upper floors. Tr. 32, PGW Exhibit 1.

6. The basement of the Service Address contains two laundry sinks, a place to hook up the washer and dryer, a gas house heater and a gas water heater. Tr. 20.

7. The basement of the Service Address includes a restroom and another room that is about 400 square feet. Tr. 20-21.

8. The 400 square-foot room is connected to the rest of the basement through a door. Tr. 21.

9. The Service Address is equipped with only one gas meter. Tr. 19.

10. On June 10, 2016, Mr. Chachkes entered into a lease agreement with Andrea Bullock for the Service Address. Tr. 8, PGW Exhibit 3.

11. Ms. Bullock's lease agreement for the Service Address makes her responsible for paying the electric, gas and water bills for the Service Address. Tr. 14-16, PGW Exhibit 3.

12. Ms. Bullock's lease agreement for the Service Address does not mention a subdivision of the building. PGW Exhibit 3.

13. On August 15, 2016, Mr. Chachkes entered into a lease agreement with Ronnysha Perkins for the "1st Floor" of the Service Address. Tr. 17, PGW Exhibit 4.

14. Ms. Perkins' lease agreement for the 1st floor of the Service Address makes her responsible for paying for electric service only. Tr. 17-19, PGW Exhibit 4.

15. Ms. Perkins' lease agreement for the 1st floor of the Service Address does not mention a subdivision or limitation of her use of the 1st floor of the building. Tr. 23-24, PGW Exhibit 4.

16. On May 26, 2017, Ms. Bullock contacted PGW to dispute her gas bill and report a possible foreign load on her account. Tr. 10, PGW Exhibit 2.

17. On August 17, 2017, Ms. Ramos visited the Service Address to perform a foreign load investigation. Tr. 36, PGW Exhibit 2.

18. Ms. Ramos accessed the basement through the separate entrance door and discovered it to be set up as a daycare. Tr. 36, PGW Exhibit 2.

19. As part of her foreign load investigation, Ms. Ramos attempted to trace the meter and piping of the appliances at the Service Address but was unable to successfully trace the pipes in the basement without doing structural damage to the property. Tr. 37, 51.

20. Ms. Ramos inspected the entire building and found three working gas appliances: a gas house heater, a gas water heater, and a gas stove. Tr. 37, 39, PGW Exhibit 2.

21. Ms. Ramos found that hot water was flowing on all the sinks in the property, including the one in the basement bathroom. Tr. 38-40, 50,52.

22. Ms. Ramos found no indication that the radiators in the basement were disconnected. Tr. 39-40.

23. Ms. Ramos concluded that the gas heater and water heater attached to the meter were supplying heat and hot water to the basement area that was set up as a daycare. Tr. 40, PGW Exhibit 2.

24. By letter dated August 23, 2017, Ms. Ramos informed Mr. Chachkes that at the conclusion of the August 17, 2017 investigation she determined that foreign load existed on Ms. Bullock's service line. PGW Exhibit 2.

25. The August 23, 2017 letter informed Mr. Chachkes that the gas service at the Service Address was placed in his name as of the date of the discovery and that Ms. Bullock's remaining balance of \$1,569.43 was transferred to his new account. Tr. 40, PGW Exhibit 2.

26. The August 23, 2017 letter informed Mr. Chachkes that gas service for the Service Address would remain in his name until the foreign load condition was corrected and a PGW representative verified that the condition no longer existed. Tr. 40-41, PGW Exhibit 2.

27. On October 27, 2017, Ms. Ramos visited the Service Address and verified that the foreign load problem no longer existed as a new tenant was renting the entire building. Tr. 42, 43, PGW Exhibit 2.

28. As of the day of the hearing, Mr. Chachkes outstanding balance with PGW was \$1,624.13, which included \$1,569.43 transferred from Ms. Bullock's account, along with current charges accumulated during the period August 16, 2016 through October 1, 2017. Tr. 9-10, 59-62, PGW Exhibit 5.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v.*

Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

The undisputed facts of the case are as follows. Mr. Chachkes owns the property at 1200 East Cheltenham Avenue, Philadelphia, PA 19124 (Service Address). Tr. 7-8, PGW Exhibit 3. The Service Address is a corner row house with a basement that is partially above ground and has a separate entry from the upper floors. Tr. 32, PGW Exhibit 1. The basement contains two laundry sinks, a place to hook up the washer and dryer, a gas house heater and a gas

water heater. Tr. 20. The basement also includes a restroom and another room that is about 400 square feet. Tr. 20-21. The 400 square-foot room is connected to the rest of the basement through a door. Tr. 21. The Service Address is equipped with only one gas meter. Tr. 19.

On June 10, 2016, Mr. Chachkes entered into a lease agreement with Andrea Bullock for the Service Address. Tr. 8, PGW Exhibit 3. Ms. Bullock's lease agreement for the Service Address made her responsible for paying the electric, gas and water bills for the Service Address. Tr. 14-16, PGW Exhibit 3. Her lease agreement for the Service Address does not mention a subdivision of the building. PGW Exhibit 3.

On August 15, 2016, Mr. Chachkes entered into a lease agreement with Ronnysha Perkins for the "1st floor" of the Service Address. Tr. 17, PGW Exhibit 4. Ms. Perkins' lease agreement for the 1st floor of the Service Address made her responsible for paying for electric service only. Tr. 17-19, PGW Exhibit 4. Her lease agreement for the 1st floor of the Service Address does not mention a subdivision or limitation of her use of the 1st floor of the building. Tr. 23-24, PGW Exhibit 4.

On May 26, 2017, Ms. Bullock contacted PGW to dispute her gas bill and report a possible foreign load on her account. Tr. 10, PGW Exhibit 2. On August 17, 2017, Ms. Ramos visited the Service Address to perform a foreign load investigation. Tr. 36, PGW Exhibit 2. She accessed the basement through the separate entrance door and discovered it to be set up as a daycare. Tr. 36, PGW Exhibit 2.

As part of her foreign load investigation, Ms. Ramos attempted to trace the meter and piping of the appliances at the Service Address but was unable to successfully trace the pipes in the basement without doing structural damage to the property. Tr. 37, 51. Ms. Ramos inspected the entire building and found three working gas appliances: a gas house heater, a gas water heater, and a gas stove. Tr. 37, 39, PGW Exhibit 2. At the end of her field visit, she concluded that the gas heater and water heater attached to the meter were supplying heat and hot water to the basement area that was set up as a daycare. Tr. 40, PGW Exhibit 2.

By letter dated August 23, 2017, PGW informed Mr. Chachkes of Ms. Ramos' findings and conclusions following the August 17, 2017 foreign load investigation at the Service Address. PGW Exhibit 2. The letter informed Mr. Chachkes that, as a result of the foreign load discovery, the gas service at the Service Address was placed in his name as of the date of the discovery, and that Ms. Bullock's remaining balance of \$1,569.43 was transferred to his new account. Tr. 40, PGW Exhibit 2. The August 23, 2017 letter also informed Mr. Chachkes that gas service for the Service Address would remain in his name until the foreign load condition was corrected and a PGW representative verified that the condition no longer existed. Tr. 40-41, PGW Exhibit 2.

On October 27, 2017, Ms. Ramos visited the Service Address and verified that the foreign load problem no longer existed as a new tenant was renting the entire building. Tr. 42, 43, PGW Exhibit 2. As of the day of the hearing, Mr. Chachkes outstanding balance with PGW was \$1,624.13, which included \$1,569.43 transferred from Ms. Bullock's account, along with current charges accumulated during the period August 17, 2017, through October 1, 2017. Tr. 9-10, 59-62, PGW Exhibit 5.

Mr. Chachkes' testimony bore great inconsistencies and variations throughout the hearing. At first, he supported his claim that no foreign load existed at the Service Address during the period June 10, 2016 to October 1, 2017 by testifying that Andrea Bullock was the sole tenant of the Service Address. Tr. 8, 10, 11. Additionally, Mr. Chachkes testified that Ms. Bullock had not rented the basement of the building, and the radiator(s) and sink located in the basement were disconnected from the house heater and water heater. Tr. 10-13. However, when confronted with Ms. Perkins' lease for the 1st floor for the Service Address that ran almost simultaneously with Ms. Bullock's lease, Mr. Chachkes averred that Ms. Bullock had rented, occupied and controlled the basement of the Service Address with the exception of a 400 square-foot partition that Ms. Perkins rented for the purpose of running a daycare center. Tr. 19-20. According to Mr. Chachkes, the portion of the basement rented by Ms. Bullock contains two laundry sinks, a place to hook up the washer and dryer, a gas house heater, a gas water heater and a restroom. Tr. 20. He maintained that, for approximately an entire year (August 2016 to August 2017), the 400 square-foot space rented by Ms. Perkins had no heat and no access to the

water and restroom facilities existing in the rest of the basement – although the two partitions communicated through a door:

Mr. Chachkes: [Ms. Perkins] wasn't renting full basement. She was renting part of the basement. There was a door separating the laundry, rest room area. With the room she was attempting to use as a daycare.

Ms. Christlieb: Okay. So, there was a large room?

Mr. Chachkes: A Four hundred square feet.

Ms. Christlieb: In the basement.

Mr. Chachkes: Correct.

Ms. Christlieb: That she was renting?

Mr. Chachkes: Yes. She rented.

Ms. Christlieb: To use for the daycare?

Mr. Chachkes: Correct.

Ms. Christlieb: And are you saying that she did not have access to the bathroom in the basement?

Mr. Chachkes: Uh-huh.

Ms. Christlieb: Okay. So, you were renting her the basement and she was to not have access to any water?

Mr. Chachkes: That's correct. But let me explain.

Ms. Christlieb: I'm asking. So, you are saying that she had no access to water; right?

Mr. Chachkes: Correct.

Ms. Christlieb: And you are saying that she had no access to the radiator. So, no heat was being put in the basement.

Mr. Chachkes: That's correct.

Tr. 21-22.

By way of explanation, Mr. Chachkes averred that, for almost an entire year, Ms. Perkins' 400 square-foot space was in the process of remodeling and preparation for the daycare center. Tr. 22. However, he later contradicted himself with regard to Ms. Perkins' use and control of the basement bathroom:

Mr. Chachkes: [Ms. Perkins] indicated that she would hire the contractors to do the job. All of the things that needed to be done. **They will remodel the bathroom**, put daycare inside this 400 square feet....

Tr. 26-27.

For its part, PGW pointed out the discrepancies between Ms. Bullock's and Ms. Perkins' lease agreements with Mr. Chachkes and his description of the lease terms in his testimony. Tr. 15, 23-24. Furthermore, PGW witness Ms. Ramos rebutted his testimony regarding the state of the radiator(s) and sink located in the basement. In particular, she testified that, during the August 17, 2017 foreign load investigation, she inspected the entire building and found three working gas appliances: a gas house heater, a gas water heater, and a gas stove. Tr. 37, 39, PGW Exhibit 2. She attempted to trace the meter and piping of the appliances at the Service Address but was unable to successfully trace the pipes in the basement without doing structural damage to the property. Tr. 37, 51. Ms. Ramos explained that she found hot water flowing on all the sinks in the property, including the one in the basement bathroom. Tr. 38-40, 50, 52. She also added that she found no indication that the radiators in the basement were disconnected. Tr. 39-40. Based on these observations, Ms. Ramos concluded that the gas heater and water heater attached to the meter were supplying heat and hot water to the basement area that was set up as a daycare. Tr. 40, PGW Exhibit 2.

In turn, Mr. Chachkes failed to provide additional evidence to rebut the evidence of the Respondent on the state of the radiator(s) and sink located in the basement. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

After carefully considering the evidence collected in this matter, I find that the Complainant failed to carry his burden of proving by a preponderance of the evidence that foreign load did not exist at the Service Address during the period June 10, 2016 to October 1, 2017.

Section 1529.1(b) of the Public Utility Code, 66 Pa.C.S. § 1529.1(b), provides in pertinent part that, “if the mobile home or residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto.” (Emphasis added). See also, *Del Vecchio v. PPL Electric Utilities Corp.*, Docket No. Z-01464793 (Order entered September 13, 2005). In *Del Vecchio*, the Commission found the utility violated 66 Pa.C.S. § 1529.1, because it failed to transfer complainant’s electric account to the landlord when it found foreign load on complainant’s meter.

A plain reading of 66 Pa.C.S. § 1529.1 holds a property owner financially responsible for a tenant’s entire account, once foreign load is verified on the tenant’s utility service. *Santos v. Metropolitan Edison Co.*, Docket No. C-00967757 (Order entered August 7, 1997). Upon finding foreign load, the utility must list the account, including any arrearage, in the name of the landlord. The landlord bears the responsibility of paying the utility bills until the foreign load is corrected. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. However, the arrearage, if any, remains with the landlord. *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010). There is no *de minimus* exception; any dispute between the landlord and tenant regarding the financial responsibilities of the parties is a matter to be resolved in the Court of Common Pleas and is outside this Commission’s jurisdiction. *Id.*

In this matter, PGW properly identified a shared meter issue at the Service Address in August of 2017. At the time, the Service Address was divided into two separate units and was rented to two different tenants. Upon finding that the Service Address was served by a single gas meter and that both units were served by the same gas water heater and gas house heater, PGW correctly concluded that Ms. Bullock’s unit was not individually metered. The Respondent complied with section 1529.1(b) of the Public Utility Code in placing the account for gas service to the service Address in Mr. Chachkes’ name after the foreign load was detected, and in holding him responsible for the transferred balance once the foreign load was removed. See *Louella Gray v. PECO Energy Company*, Docket F-2012-2285766 (Final Order entered

December 3, 2012). Mr. Chachkes' Complaint against PGW is denied in its entirety because he failed to meet his burden of establishing that Philadelphia Gas Works erred in transferring his tenant's balance to his account after the discovery of a foreign load at the Service Address.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).
3. Section 1529.1(b) of the Public Utility Code provides in pertinent part that, if the residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto.
4. A plain reading of 66 Pa.C.S. § 1529.1 holds a property owner financially responsible for a tenant's entire account, once foreign load is verified on the tenant's utility service. *Santos v. Metropolitan Edison Co.*, Docket No. C-00967757 (Order entered August 7, 1997).
5. Once the foreign load is corrected by the landlord and verified by the utility, the utility places the account back in the name of the tenant. However, the arrearage, if any, remains with the landlord. *Ace Check Cashing Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428 (Order entered May 21, 2010).

