

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Lupo	:	
	:	
v.	:	F-2019-3013790
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint, finding that the Complainant did not meet his burden of proving that the Respondent violated the Commission’s regulations, or its Commission-approved tariff, as it relates to (1) holding him responsible for services rendered to his service address after he left the address, or (2) the issuance of his monthly bills.

HISTORY OF THE PROCEEDING

On October 24, 2019, Andrew Lupo (Complainant or Mr. Lupo) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW), alleging that there were incorrect charges in the amount of \$897.42 on his PGW bill. Mr. Lupo alleged that he received service from PGW at 1840 N. 16th Street, Philadelphia, Pennsylvania, where he resided from August 1, 2014 to July 31, 2015. Mr. Lupo requested that the incorrect charges be removed from his account as they represent charges and fees issued after he left the property, alleging that his obligation to pay for gas service rendered to the property should have ceased once he left the property. Mr.

Lupo also alleged that he never received a bill for these charges and only became aware that he was still being billed for gas usage rendered to the property once he was contacted by a collection agency and was informed that he had an outstanding account balance with PGW.

The Complaint is a timely appeal of a decision made by the Commission's Bureau of Consumer Services (BCS) at BCS No. 3670171, wherein Mr. Lupo was held responsible for his outstanding account balance with PGW.

On November 13, 2019, PGW filed an Answer to the Complaint, alleging that Mr. Lupo was responsible for charges in the amount of \$897.42 because he had never called or otherwise contacted PGW to discontinue or cancel service at the service address property. PGW requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice served upon the parties on November 18, 2019, the Commission scheduled this matter for a telephonic hearing on December 30, 2019 and assigned the case to me as presiding officer. The December 30, 2019 hearing was cancelled and rescheduled to February 12, 2020 via a Hearing Cancellation/Reschedule Notice served on December 17, 2019.

A Prehearing Order, served upon the parties on January 31, 2020, addressed, inter alia, the procedures applicable to the hearing.

The February 12, 2020 hearing was held as scheduled. Mr. Lupo was present for the hearing and testified in support of his Complaint. Mr. Lupo sponsored no exhibits for the record. Attorney Laureto Farinas was present on behalf of PGW and presented the testimony of Jessica Antonetti, a customer review officer employed by PGW, who sponsored the following five exhibits which were admitted into the record:

- PGW Exhibit 1 – Statements of Account
- PGW Exhibit 2 – Dispute Resolution Unit Correspondence
- PGW Exhibit 3 – BCS Decision
- PGW Exhibit 4 – Contacts for Account
- PGW Exhibit 5 – Final Bill

Ms. Antonetti additionally sponsored a sixth exhibit at the hearing that was not distributed to me or Mr. Lupo prior to the hearing. The exhibit was distributed to me and Mr. Lupo following the hearing. Mr. Lupo did not submit any objections to the exhibit by February 21, 2020, the deadline provided at the hearing for objections to the exhibit. Therefore, the sixth exhibit will be admitted into the record through this Initial Decision. The exhibit is identified as follows:

- PGW Exhibit 6 – eGuide Information Andrew Lupo

The record closed on February 21, 2020, upon receipt of the 28-page electronic transcript. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Andrew Lupo.
2. The Respondent is Philadelphia Gas Works.
3. Mr. Lupo received gas service from PGW at 1840 N. 16th Street, Philadelphia, Pennsylvania (service address).
4. Service at the service address was initiated on August 1, 2014. (PGW Exhibit 1, p. 1).
5. Mr. Lupo moved out of the service address in August 2015. (Tr. 7).
6. PGW has no record that Mr. Lupo ever contacted PGW to request that service be discontinued at the service address. (Tr. 17-19; PGW Exhibit 4).
7. Mr. Lupo's account at the service address was closed effective July 1, 2016, when a new applicant requested gas service at the service address. (PGW Exhibit 2, p. 1).

8. Mr. Lupo's final bill for the service address was generated on July 14, 2016, for an amount of \$897.42. (PGW Exhibit 5).

9. In October 2018, Mr. Lupo was contacted by a collection agency and was informed that his PGW account was delinquent in the amount of \$897.42. (Tr. 7, 8).

10. PGW customers can enroll in PGW's electronic billing (e-billing) system. While enrolled in e-billing, customers receive their monthly bills electronically through email. (Tr. 8).

11. While he was a customer with PGW, Mr. Lupo was enrolled in e-billing. (Tr. 8, 21; PGW Exhibit 6).

12. Mr. Lupo never unenrolled from e-billing. (Tr. 8; PGW Exhibit 6).

13. Mr. Lupo elected to not receive paper bills from PGW. (Tr. 22; PGW Exhibit 6).

14. The July 14, 2016, bill was sent to Mr. Lupo through e-billing. (Tr. 20).

DISCUSSION

Section 701 of the Public Utility Code (Code) provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission. 66 Pa.C.S. § 701.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a Complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwth. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwth. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

Mr. Lupo raised two issues in his Complaint. First, Mr. Lupo contested his outstanding account balance with PGW, alleging that he should not be held responsible for charges issued to his account after he left the service address. Second, Mr. Lupo alleged that PGW failed to issue him bills regarding said charges. Both issues will be addressed below.

Outstanding account balance

Mr. Lupo testified that he resided at the service address from August 2014 to August 2015. In October 2018, Mr. Lupo was contacted by a collection agency and was

informed that he had an outstanding account balance with PGW in the amount of \$897.42. The balance represents charges for gas usage rendered to the service address following Mr. Lupo leaving the service address. Mr. Lupo argued that he is not responsible for the outstanding balance, arguing that his obligation to pay for gas service rendered to the service address ceased after he left the address in August 2015. When asked if he had ever contacted PGW to ask that service be discontinued at the service address, Mr. Lupo replied, “To the best of my knowledge, I did.” (Tr. 7).

Ms. Antonetti testified on behalf of PGW that PGW has no record that Mr. Lupo contacted PGW to request that service be discontinued at the service address. Service was discontinued in Mr. Lupo’s name at the service address after a new applicant requested gas service at the service address on July 1, 2016. On July 14, 2016, a final bill was issued to Mr. Lupo in the amount of \$897.42. The outstanding balance of \$897.42 consists mostly of charges issued following Mr. Lupo vacating the property until service was taken out of his name on July 1, 2016.¹ PGW argued that Mr. Lupo is responsible for his \$897.42 outstanding PGW account balance because Mr. Lupo never contacted PGW to ask that service at the service address be discontinued; therefore, he is responsible for the charges rendered to the address until service was taken out of his name.

The Commission’s regulations address discontinuance of service, stating the following:

§ 56.72. Discontinuance of service.

A public utility may discontinue service without prior written notice under the following circumstances:

(1) *Customer’s residence.* When a customer requests a discontinuance at the customer’s residence, when the customer and members of the customer’s household are the only occupants.

52 Pa. Code § 56.72(1).

¹ Mr. Lupo’s PGW account balance on October 13, 2015, about two months after he moved from the service address, was \$3.45. (PGW Exhibit 1, p. 2).

§ 59.25. Notice of desire to have service discontinued.

A customer who is about to vacate premises supplied with service by a public utility, or who wishes to have service discontinued, shall give at least 24-hour notice to the utility, specifying the date on which it is desired that service be discontinued. In the absence of notice, the customer shall be responsible for services rendered.

52 Pa. Code § 59.25.

PGW's Commission-approved tariff also addresses discontinuance of service, stating the following:

5.5. DISCONTINUANCE BY CUSTOMER - GENERALLY.

5.5.A. Notice of discontinuance. Except where the provisions of Discontinuance of Service to Leased Premises, 66 Pa.C.S. § 1521 et seq. apply, the Customer is required to give the Company at least seven days notice to discontinue the supply of Gas specifying the date on which it is desired that service be discontinued. In the absence of notice, the Customer shall be responsible for services rendered.

PGW Gas Service Tariff, First Revised Page No. 32.

Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa.Cmwlth. 1981). A Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. Id.; 66 Pa.C.S. § 316; and Kossman v. Pa. Pub. Util. Comm'n, 694 A.2d 1147 (Pa.Cmwlth. 1997).

Mr. Lupo argued that his obligation to pay for gas services provided to the service address property terminated upon leaving the property. However, it is not sufficient for Mr. Lupo to simply vacate the property in order for his obligation to pay for gas services to cease. As the law cited above provides, in order for his obligation to pay for gas services to cease, Mr. Lupo must have notified PGW of his desire to have service be discontinued upon vacating the property. In absence of such notification, Mr. Lupo shall be held responsible for services

rendered to the address. PGW was not under any legal obligation to discontinue service at the service address property unless it received notification from Mr. Lupo to discontinue service. Thus, the key question is whether Mr. Lupo notified PGW that he desired to have service be discontinued at the address upon vacating the address.

Mr. Lupo testified that he notified PGW to discontinue service; however, Mr. Lupo's testimony concerning when he made such a request was vague. Specifically, when asked when he informed PGW that he wanted service discontinued, he stated, "The date is not clear to me being that it was so long ago. I don't really have any records from that time." (Tr. 7). When asked again on cross-examination when he contacted PGW to request that his service be discontinued, he stated that it likely would have been around July, August, or September of 2015. (Tr. 9). In addition to his vague testimony, Mr. Lupo provided no documentary evidence such as phone records to prove that he ever contacted PGW to request service discontinuation. Mere bald assertions, personal opinions or perceptions do not constitute evidence to bolster a claim. MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000).

As the party with the burden of proof, the Complainant must initially produce sufficient credible evidence to establish a *prima facie*² case. Once a *prima facie* case is established, the burden of going forward with the evidence shifts to the Respondent. After review of the evidence provided by Mr. Lupo, Mr. Lupo failed to produce sufficient credible evidence to establish a *prima facie* case. Mr. Lupo did not establish a presumption that he contacted PGW to request service discontinuation.

Even if it could be concluded that the Complainant established a *prima facie* case, and thereby shifted the burden of going forward with evidence to the Respondent, the evidence provided by PGW rebutted any evidence produced by Mr. Lupo. PGW provided evidence concerning the contacts made between Mr. Lupo and PGW concerning Mr. Lupo's PGW

² *Prima facie* is defined as evidence sufficient to establish a fact or raise a presumption unless disproved or rebutted; based on what seems to be true on first examination, even though it may later be proved to be untrue. Black's Law Dictionary (11th ed. 2019), *prima facie*.

account. The contact information reveals that Mr. Lupo did not contact PGW in 2015, or at any point, to request service discontinuation at the service address. PGW has no record of any request made by Mr. Lupo to discontinue service at the service address.

As it has been determined that Mr. Lupo did not notify PGW to discontinue service at the service address, PGW was not obligated to discontinue service. In absence of a request to discontinue service, service remained in Mr. Lupo's name following him leaving the property until a new applicant applied for service at the service address. Thus, Mr. Lupo is responsible for his outstanding account balance representing charges issued to the service address until service was taken out of his name.

In conclusion, Mr. Lupo has not met his burden of proving that PGW violated the Commission's regulations or its Commission-approved tariff by billing Mr. Lupo for services rendered to the service address after he left the address.

Failure to receive bills

Mr. Lupo testified that he has no record of being billed for any charges issued after he left the service address. (Tr. 6). Mr. Lupo testified that he became aware that PGW was still charging him for gas service provided to the service address after he left the property when he was contacted by a collection agency in October 2018. On cross-examination, Mr. Lupo admitted to enrolling in e-billing while at the service address and to never cancelling his e-billing with PGW.

Ms. Antonetti testified that Mr. Lupo was enrolled in e-billing and thus received all his PGW bills, including the final bill issued July 14, 2016, electronically through email.³ Ms. Antonetti testified that Mr. Lupo never cancelled his enrollment in e-billing and was still enrolled in e-billing as of the day of the hearing. While enrolled in e-billing, Mr. Lupo elected to not receive paper bills.

³ The email address that Mr. Lupo provided at the hearing as his current one was the same email address that he used to enroll in e-billing. (Tr. 8; PGW Exhibit 6).

The Commission's regulations require a public utility to render a bill once every billing period to every residential customer in accordance with approved rate schedules. 52 Pa. Code § 56.11(a). A utility may utilize electronic billing in lieu of mailing paper bills under certain requirements. 52 Pa. Code § 56.11(b).

Regarding this issue, any evidence provided by Mr. Lupo in that he did not receive bills from PGW was rebutted by PGW's evidence that shows that Mr. Lupo did in fact receive all his bills electronically through email. There is no evidence to make a conclusion that PGW failed to provide Mr. Lupo's monthly bills to him electronically. PGW issued all of Mr. Lupo's bills electronically in compliance with Mr. Lupo's election to receive all his bills electronically instead of by physical, paper mail.

In conclusion, Mr. Lupo has not met his burden of proving that PGW violated the Commission's regulations regarding the issuance of his monthly bills.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. A public utility may discontinue service without prior written notice when a customer requests a discontinuance at the customer's residence, when the customer and members of the customer's household are the only occupants. 52 Pa. Code § 56.72(1).
4. A customer who is about to vacate premises supplied with service by a public utility, or who wishes to have service discontinued, shall give at least 24-hour notice to the utility, specifying the date on which it is desired that service be discontinued. In the absence of notice, the customer shall be responsible for services rendered. 52 Pa. Code § 59.25.

5. Except where the provisions of Discontinuance of Service to Leased Premises, 66 Pa.C.S. § 1521 et seq. apply, the Customer is required to give the Company at least seven days notice to discontinue the supply of Gas specifying the date on which it is desired that service be discontinued. In the absence of notice, the Customer shall be responsible for services rendered. PGW Gas Service Tariff, First Revised Page No. 32.

6. The Complainant did not meet his burden of proving that PGW violated the Commission's regulations or its Commission-approved tariff by holding him responsible for services rendered in absence of notice to discontinue service.

7. A public utility is required to render a bill once every billing period to every residential customer in accordance with approved rate schedules. 52 Pa. Code § 56.11(a).

8. A utility may utilize electronic billing in lieu of mailing paper bills under certain requirements. 52 Pa. Code § 56.11(b).

9. The Complainant did not meet his burden of proving that PGW failed to render him monthly bills in accordance with the Commission's regulations.

ORDER

THEREFORE,

IT IS ORDERED:

1. That "PGW Exhibit 6 – eGuide Information Andrew Lupo" is admitted into the record.

