

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gerald Johnson	:	
	:	
v.	:	F-2019-3014389
	:	
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 by holding him responsible for services rendered to two service addresses in absence of a request to discontinue service to the addresses.

HISTORY OF THE PROCEEDING

On, November 18, 2019, Gerald Johnson (Complainant or Mr. Johnson) 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 on his bill. The Complaint is a timely appeal of a decision made by the Commission’s Bureau of Consumer Services, BCS No. 3676835, wherein Mr. Johnson’s Informal Complaint was dismissed.

On December 9, 2019, PGW filed an Answer to the Complaint. PGW admitted or denied the various averments in the Complaint, specifically denying that there were incorrect charges on the Complainant's bill. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on December 11, 2019, the Commission scheduled this matter for a telephonic hearing on January 22, 2020 and assigned the case to me.

A Prehearing Order, served upon the parties on January 2, 2020, addressed, inter alia, the procedures applicable to the hearing.

The January 22, 2020 hearing was held as scheduled. Mr. Johnson appeared *pro se* and testified in support of his Complaint. Mr. Johnson sponsored no exhibits for the record. Attorney Graciela Christlieb appeared on behalf of PGW and presented the testimony of Josalynn Moore, a customer review officer employed by PGW, who sponsored six exhibits identified as PGW Exhibits 1–6, which were admitted into the record. The evidentiary record was held open at the conclusion of the hearing, in order to give the parties an opportunity to submit late-filed exhibits.

An Interim Order issued on January 23, 2020, directed the parties to submit late-filed exhibits by February 5, 2020, and any objections thereto by February 12, 2020. PGW submitted late-filed exhibits on February 4, 2020. Mr. Johnson did not submit any late-filed exhibits or any objections to PGW's late-filed exhibits. PGW's late-filed exhibits, identified as PGW Exhibits 7–10, will be admitted into the record through this Initial Decision.

The 63-page transcript of the January 22, 2020 hearing was filed with the Commission on February 10, 2020.

The record closed on February 14, 2020, through an Interim Order Closing the Record served on that date. The record in this matter consists of the January 22, 2020 hearing

transcript and PGW Exhibits 1–10. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Gerald Johnson.
2. The Respondent is Philadelphia Gas Works.
3. PGW Exhibit 1 is the service agreement for 173 West Chew Avenue, Philadelphia, Pennsylvania (Service Address 1).
4. Mr. Johnson established service at Service Address 1 on November 28, 2001. (Tr. 13, 16; PGW Exhibit 1, p. 1).
5. Mr. Johnson sold the property at Service Address 1 on February 28, 2017. (Tr. 9).
6. Gas service was taken out of Mr. Johnson's name at Service Address 1 on September 7, 2017 because a new customer put service in their name at the address. (Tr. 13, 17; PGW Exhibit 1, p. 3).
7. On June 14, 2018, the customer of record for Service Address 1 presented PGW with documentation indicating that their lease for the address began on May 1, 2017. (Tr. 13, 18; PGW Exhibit 1, p. 4).
8. PGW Exhibit 2 is the statement of account for Service Address 1 from January 1, 2017 to January 1, 2020.
9. Subsequent to receiving documentation from the customer of record of Service Address 1 indicating that their lease for the address began on May 1, 2017, PGW

cancelled the bills issued to Mr. Johnson for gas usage rendered to the address between May 1, 2017 and September 7, 2017. (Tr. 13; PGW Exhibit 2).

10. Mr. Johnson's final account balance for service at Service Address 1 was \$379.14. (Tr. 13; PGW Exhibit 2).

11. PGW Exhibit 3 is the service agreement for 171 West Chew Avenue, Philadelphia, Pennsylvania (Service Address 2).

12. Mr. Johnson established service at Service Address 2 on June 9, 2003. (Tr. 13, 19; PGW Exhibit 3, p. 1).

13. Mr. Johnson sold the property at Service Address 2 on February 28, 2017. (Tr. 8).

14. Gas service in Mr. Johnson's name at Service Address 2 was terminated on June 15, 2017 for nonpayment. (Tr. 13, 20; PGW Exhibit 3, p. 2).

15. PGW Exhibit 4 is the statement of account for Service Address 2 from January 1, 2017 to January 1, 2020.

16. Mr. Johnson's final account balance for service at Service Address 2 was \$646.13. (Tr. 14; PGW Exhibit 4).

17. Mr. Johnson established service with PGW at his current address of 137 West Grange Avenue (Current Address) on June 26, 2018. (Tr. 14).

18. PGW Exhibit 6 is the statement of account for Current Address from January 1, 2017 to January 1, 2020.

19. Upon establishing service at Current Address, the outstanding account balances from Service Address 1 and Service Address 2 were transferred to the Current Address account. (PGW Exhibit 6, p. 1).

20. Mr. Johnson's current account balance is \$2,411.59, which includes the combined outstanding account balance of \$894.02 from Service Address 1 and Service Address 2, and \$1,517.57 owed for service provided to Current Address. (Tr. 22-23; PGW Exhibit 6).

21. PGW Exhibits 9 and 10 are contacts for Mr. Johnson's accounts at Service Address 1 and Service Address 2, respectively, in 2017.

22. Mr. Johnson did not contact PGW to request that service be discontinued at Service Address 1 or Service Address 2 in 2017, or anytime thereafter. (Tr. 14, 15; PGW Exhibits 9 and 10).

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.Cmwlt. 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.Cmwlth. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

Additionally, this 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).

As a timely appeal from a BCS decision this is a *de novo* review of the BCS determination. 52 Pa. Code § 56.403(a). The term "*de novo*" simply means anew thereby requiring that the party with the burden of proof develop a record that contains substantial evidence that supports the desired outcome. *Stammel v. P.G. Energy*, Docket No. C-20027994 (Opinion and Order entered May 21, 2003).

In this matter, Mr. Johnson alleges that there were incorrect charges on his bill. Thus, the burden is on Mr. Johnson to prove that PGW issued him incorrect bills in violation of the Public Utility Code, the Commission's regulations or order, or a Commission-approved tariff.

The incorrect charges at issue were issued to Mr. Johnson for service rendered to 173 West Chew Avenue (Service Address 1) and 171 West Chew Avenue (Service Address 2). Mr. Johnson established service at Service Address 1 on November 28, 2001 and at Service Address 2 on June 9, 2003. Mr. Johnson testified that he sold both properties on February 28, 2017. Mr. Johnson asserted that he contacted PGW the week of, or the week after, February 28,

2017 to request that service be discontinued at both addresses. (Tr. 8, 9). PGW did not discontinue service to the service addresses on or around February 28, 2017 and continued to bill Mr. Johnson for service rendered to the two addresses. Mr. Johnson alleged that he should not be held responsible for charges issued to the addresses after he sold the properties and notified PGW to discontinue service to the addresses.

In response to Mr. Johnson's testimony, PGW presented the testimony of Ms. Moore. Concerning Service Address 1, Ms. Moore testified that Mr. Johnson's final account balance from Service Address 1 was \$379.14. Ms. Moore testified that PGW stopped billing Mr. Johnson for service rendered to Service Address 1 on September 7, 2017, when a new customer made a request to place service in their name at the address. Ms. Moore testified that upon receiving documentation from the new customer indicating that his lease for Service Address 1 began on May 1, 2017, PGW cancelled the bills issued to Mr. Johnson from May 1, 2017 to September 7, 2017. Thus, Mr. Johnson's final account balance from Service Address 1 of \$379.14 represents charges for gas usage rendered to the address ending May 1, 2017.

Regarding Service Address 2, Ms. Moore testified that Mr. Johnson's final account balance from Service Address 2 was \$646.13. Ms. Moore testified that PGW stopped billing Mr. Johnson for service rendered to Service Address 2 on June 15, 2017, when PGW terminated gas service to the address for nonpayment. Thus, the final account balance from Service Address 2 of \$646.13 represents charges for gas usage rendered to the address ending June 15, 2017.

Concerning Mr. Johnson's claim that he contacted PGW to request that PGW discontinue service to the two service addresses around February 28, 2017, Ms. Moore testified that PGW has no record that Mr. Johnson ever called or otherwise made contact with PGW to request that service be discontinued at either service address.

The Commission's regulations address transfer of accounts and discontinuance of service, stating the following:

§ 56.16. Transfer of accounts.

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. After a reasonable attempt to obtain meter access, if the public utility is not able to access the meter for discontinuance, service shall be discontinued with an estimated meter reading upon which the final bill will be based. The resulting final bill is subject to adjustment once the public utility has obtained an actual meter reading.

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

52 Pa. Code § 56.16(a), (b).

§ 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.

It is well-settled that 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).

Pursuant to the Commission's regulations and PGW's tariff, PGW is obligated to discontinue service to a premises once it receives a request from the customer to discontinue service. In absence of such a request, PGW is not obligated to discontinue service, and the customer is responsible for the services that continue to be rendered. Thus, the key question in this matter is whether the evidence shows that Mr. Johnson made a request to PGW to discontinue service to the service addresses sometime around February 28, 2017, as he asserted.

As the party with the burden of proof, the Complainant must initially produce sufficient credible evidence to establish a *prima facie*¹ case. Once a *prima facie* case is established, the burden of going forward with the evidence shifts to the Respondent. Mr. Johnson testified that he contacted PGW around February 28, 2017, the date he sold the service address properties, to request that service be discontinued to the addresses. Mr. Johnson's testimony established a presumption that he contacted PGW to request service discontinuation, thereby shifting the burden of going forward with the evidence to PGW.

The evidence provided by PGW, however, rebutted the evidence produced by Mr. Johnson. PGW witness Ms. Moore testified that she reviewed PGW's internal records and found no record of Mr. Johnson ever contacting PGW to request service discontinuation to the service addresses. The service agreements and contact information for the two service addresses do not reveal that Mr. Johnson contacted PGW at any point to request service discontinuation. Mr. Johnson did not submit any further evidence, such as his own documentary evidence, to further support his claim. As PGW's credible evidence rebutted Mr. Johnson's evidence, it must be concluded that Mr. Johnson never contacted PGW to request service discontinuation.

¹ *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*.

As it has been determined that Mr. Johnson did not notify PGW to discontinue service to Service Address 1 or Service Address 2 around the time he sold the properties, or at any point, PGW was not obligated to discontinue service to the addresses. In absence of a request to discontinue service to Service Address 1, service remained in Mr. Johnson's name, and Mr. Johnson continued to be billed for services rendered, until a new customer put service in his name at the address on September 7, 2017. As noted, PGW later cancelled the bills issued to Mr. Johnson from May 1, 2017 to September 7, 2017 once the new customer of record of Service Address 1 informed PGW that his lease for the address began on May 1, 2017. In absence of a request to discontinue service to Service Address 2, service remained in Mr. Johnson's name, and Mr. Johnson continued to be billed for services rendered, until services were terminated on June 15, 2017. Mr. Johnson is responsible for these charges.

In conclusion, Mr. Johnson has not met his burden of proving that PGW violated the Commission's regulations or its Commission-approved tariff by holding Mr. Johnson responsible for services rendered to the service addresses in absence of a request to discontinue service to the addresses. The amount of \$894.02, which consists charges owed from Service Address 1 and Service Address 2, was properly transferred to Mr. Johnson's residential account at Current Address pursuant to 52 Pa. Code § 56.16(b).

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 customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be

discontinued. In the absence of a notice, the customer shall be responsible for services rendered. 52 Pa. Code § 56.16(a).

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. In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa. Code § 56.16(b).

6. 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.

7. 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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PGW Exhibits 7–10 are admitted into the record in this proceeding.

