

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith Thomason	:	
	:	
v.	:	F-2020-3019465
	:	
Philadelphia Gas Works	:	
(Complaint-Appellant)	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision sustains the Complaint-Appeal filed by Philadelphia Gas Works at Docket No. F-2020-3019465 and vacates the Pennsylvania Public Utility Commission’s Bureau of Consumer Services’ decision at BCS Case # 3694222, which ordered Philadelphia Gas Works to apply a credit of \$250.54 to Judith Thomason’s account and cited the Company for violating 52 Pa.Code §§ 56.1, 56.151(4).

HISTORY OF THE PROCEEDING

On April 22, 2019, Judith Thomason filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) against Philadelphia Gas Works (PGW or the Company). On January 31, 2020, BCS issued a decision granting Judith Thomason’s informal complaint upon finding that PGW improperly refused to credit Ms. Thomason’s account for a payment by check in the amount of \$250.54. BCS also cited PGW: (1) for failing in its obligation of good faith, honesty, and fair dealing in violation of 52 Pa.Code § 56.1; and (2)

for failing to provide the customer with the information necessary for an informed judgment in violation of 52 Pa. Code § 56.151 (4).

On April 13, 2020, PGW filed a Complaint-Appeal challenging the BCS' decision. Specifically, PGW alleged that it never received a copy of the \$250.54 check that clearly indicated who had cashed the check. As relief, PGW requested that the Commission overturn the decision issued by BCS on January 31, 2020, at BCS Case No.# 3694222.

Ms. Thomason did not file an Answer.

A Hearing Notice dated June 2, 2020, notified the parties that a call-in telephone hearing was scheduled in this matter for Tuesday, July 7, 2020, at 10:00 a.m.

A Prehearing Order was issued on June 25, 2020, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled. Judith Thomason appeared *pro se* and testified on her own behalf. Graciela Christlieb, Esq., appeared representing Philadelphia Gas Works and presented the testimony of Jessica Glace, who is a senior customer review officer with PGW in charge of reviewing and investigating formal complaints filed with the Commission. The Respondent sponsored four exhibits, which were admitted into the record in this matter.

At the hearing, I provided Ms. Thomason with the opportunity to make another attempt at discovering the party that cashed her check. Tr. 39. I instructed her to submit her finding to me, as a late filed-exhibit, by no later than August 7, 2020, and I instructed PGW to submit any objections to the late-filed exhibit by August 17, 2020. Tr. 39, 46.

Ms. Thomason did not submit any late-filed exhibits.

The record closed on August 17, 2020.

FINDINGS OF FACT

1. The Complainant is Judith Thomason, who resides at 655 Crowson Street, Philadelphia, PA 19119 (Service Address). Tr. 8.
2. The Respondent and Complainant-Appellant is Philadelphia Gas Works, a jurisdictional public utility.
3. On or about January 14, 2019, Ms. Thomason wrote a check for \$250.54 payable to Philadelphia Gas Works and mailed it. Tr. 9-10, 19.
4. Ms. Thomason did not use the PGW bill stub when she mailed the check. Tr. 16-17.
5. On January 17, 2019, the check cleared, and the money was taken out of Ms. Thomason's account with the Police and Fire Credit Union. Tr. 30, PGW Exhibit 3.
6. On February 13, 2019, Ms. Thomason contacted PGW to inquire about the check payment. PGW Exhibit 2.
7. PGW was unable to locate the check payment made by Ms. Thomason for \$250.54. Tr. 23-24, PGW Exhibit 1.
8. On February 15, 2019, PGW's Dispute Resolution Unit initiated an investigation following receipt of Ms. Thomason's written request to locate the missing payment. PGW Exhibit 2.
9. On February 15, 2020, Ms. Thomas submitted to PGW via facsimile a copy of a check in the amount of \$250.54, made payable to PGW. PGW Exhibit 3.

10. The back of the check was illegible and PGW was unable to determine who had stamped or endorsed the check. Tr. 9, PGW Exhibit 3.

11. On March 5, 2019, PGW advised Ms. Thomason via letter that it would need a clear copy of the cleared check in order to complete her request. Tr. 27-28, 30, PGW Exhibit 3.

12. Ms. Thomason inquired with her credit union in order to find the party that had deposited or cashed her \$250.54 check. Tr. 11-12, PGW Exhibits 2 and 3.

13. The Police and Fire Credit Union provided Ms. Thomason with copies of the cleared check but did not provide her with information on the party that endorsed the check. Tr. 11-12, 18-20, PGW Exhibit 3.

14. On April 22, 2019, Ms. Thomason filed an informal complaint with BCS at BCS Case # 3694222 alleging that PGW had failed to credit her account for the \$250.54 payment made by check in January of 2019. Tr. 31, PGW Exhibit 4.

15. As relief, Ms. Thomason sought the Commission's assistance in verifying her payment and in crediting her account with PGW in the amount of \$250.54. Tr. 31, PGW Exhibit 4.

16. On January 31, 2020, BCS issued a decision in BCS Case # 3694222 granting Judith Thomason's informal complaint upon finding that PGW improperly refused to credit Ms. Thomason's account for a payment by check in the amount of \$250.54. Tr. 31, PGW Exhibit 4.

17. BCS also cited PGW: (1) for failing in its obligation of good faith, honesty, and fair dealing in violation of 52 Pa.Code § 56.1; and (2) for failing to provide the customer with the information necessary for an informed judgment in violation of 52 Pa. Code § 56.151 (4). PGW Exhibit 4.

18. As of the date of the hearing, the Police and Fire Credit Union had not provided Ms. Thomason with information as to who endorsed the back of the \$250.54 check and ultimately cashed it. Tr. 20-21, 29-30.

DISCUSSION

On April 22, 2019, Ms. Thomason filed an informal complaint with BCS at BCS Case # 3694222 alleging that PGW had failed to credit her account for the \$250.54 payment made by check in January of 2019. Tr. 31, PGW Exhibit 4. As relief, Ms. Thomason sought the Commission's assistance in verifying her payment and in crediting her account with PGW in the amount of \$250.54. Tr. 31, PGW Exhibit 4.

On January 31, 2020, BCS issued a decision in BCS Case # 3694222, granting Judith Thomason's informal complaint upon finding that PGW improperly refused to credit Ms. Thomason's account for a payment by check in the amount of \$250.54. Tr. 31, PGW Exhibit 4. BCS also cited PGW: (1) for failing in its obligation of good faith, honesty, and fair dealing in violation of 52 Pa.Code § 56.1; and (2) for failing to provide the customer with the information necessary for an informed judgment in violation of 52 Pa.Code § 56.151 (4). PGW Exhibit 4.

On April 13, 2020, PGW filed a Complaint-Appeal challenging the BCS' decision. Specifically, PGW alleged that it never received a copy of the \$250.54 check that clearly showed the party that had endorsed the back of the check. As relief, PGW requested that the Commission overturn the decision issued by BCS on January 31, 2020, at BCS Case # 3694222.

A timely appeal from an informal decision of the BCS is reviewed *de novo*. 52 Pa. Code §§ 56.173(a), 56.403(a). *De novo* means that there is no part of the record in the informal proceeding that can be relied upon in the formal proceeding. In a *de novo* appeal from a decision of the BCS, the burden of proof remains with the party who filed the original informal complaint, except for legal or policy issues raised by the utility on appeal. See 52 Pa.

Code § 56.173(f);¹ see also *Rafferty v. Verizon Pa., Inc.*, Docket No. F-02211831 (Order entered December 22, 2008); *Claypool v. T. W. Phillips Gas & Oil Co.*, 1995 Pa. PUC LEXIS 160 (Order entered December 22, 1995) (In formal complaint proceedings, the burden of proof lies with the customer/complainant. "This remains true whether the case is being litigated as an informal complaint filed by the customer or as a formal complaint on appeal filed by the utility.")

In the present case, Judith Thomason, as the proponent of a rule or order, bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, she must demonstrate that the Complaint-Appellant has violated the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing 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.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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.Cmwlt. 2001).

¹ 52 Pa. Code § 56.173(f) is part of the ongoing rulemaking at Docket No. L-2015-2508421, *Rulemaking to Amend the Provisions of 52 Pa. Code, Chapter 56 to Comply with the Amended Provisions of 66 Pa. C.S Chapter 14*, which explains that the language will be revised to clarify that the burden of proof remains with the party who filed the informal complaint in order to be consistent with Commission practice. Order of July 21, 2016 at p. 9. As Commission jurisdiction covers utilities and licensees, but only extends to those consumers who voluntarily submit to it, the only way to provide a meaningful appeal from a BCS determination is to start over, with the complainant in the informal BCS investigation as the complainant in the formal case arising from it.

The undisputed facts of this case are as follows. On or about January 14, 2019, Ms. Thomason wrote a check for \$250.54 payable to Philadelphia Gas Works. Tr. 9-10, 19. She did not use the PGW bill stub when she mailed the check. Tr. 16. On January 17, 2019, the check cleared, and the money was taken out of Ms. Thomason's account with the Police and Fire Credit Union. Tr. 30, PGW Exhibit 3. On February 13, 2019, Ms. Thomason contacted PGW to inquire about the check payment. PGW Exhibit 2. PGW was unable to locate the check payment made by Ms. Thomason. Tr. 23-24, PGW Exhibit 1. On February 15, 2019, PGW's Dispute Resolution Unit initiated an investigation following receipt of Ms. Thomason's written request to locate the missing payment. PGW Exhibit 2. Ms. Thomas submitted via facsimile a copy of a check in the amount of \$250.54, made payable to PGW. PGW Exhibit 3. The back of the check was illegible and PGW was unable to determine who had stamped or endorsed the check. PGW Exhibit 3. On March 5, 2019, PGW advised Ms. Thomason via letter that it would need a clear copy of the cleared check to complete her request. PGW Exhibit 3.

Ms. Thomason inquired with her credit union on multiple occasions in order to find the party that had received and endorsed her \$250.54 check. Tr. 11-12, PGW Exhibits 2 and 3. The Police and Fire Credit Union provided Ms. Thomason with copies of the cleared check but did not provide her with information regarding the party that endorsed the back of the check. PGW Exhibit 3.

The Public Utility Code imposes on every public utility a duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501. In addition, Chapter 56, section 1 of the Commission's regulations imposes upon a public utility "an obligation of good faith, honesty and fair dealing in its performance and enforcement." 52 Pa. Code § 56.1 (Standards and Billing Practices for Residential Public Utility Service – Statement of Purpose and Policy). More specifically, the Commission regulation at 52 Pa. Code § 56.151 (4) instructs in pertinent part that, upon initiation of a dispute the public utility shall "Provide the customer or occupant with the information necessary for an informed judgment, including, but not limited to, relevant portions of tariffs, statements of account and results of meter tests." 52 Pa. Code § 56.151 (4) (Public Utility Company Dispute Procedures - General Rule).

Upon careful review of the evidence collected in this matter, I find that PGW's actions comply with the directives of 66 Pa.C.S. § 1501 and 52 Pa.Code §§ 56.1, 56.151(4). In particular, PGW initiated an investigation following receipt of Ms. Thomason's written request to locate the missing payment. By letter dated March 5, 2019, PGW highlighted the problem it encountered with the documentation submitted by Ms. Thomason (the back of the check was illegible), and instructed Ms. Thomason of the information that the Company needed (a cleared copy of the back of the check in question) in order to make a determination on Ms. Thomason's claim. I find that PGW's actions towards Ms. Thomason were fair, honest and in good faith, and that the information the Company provided to Ms. Thomason was sufficient for her to form an informed judgment on the issue. In fact, the letter from the Police and Fire Credit Union dated March 31, 2019 and April 22, 2019, indicate that Ms. Thomason relied on PGW's instructions in her efforts to obtain information from her credit union. Despite her efforts, as of the date of the hearing, the Police and Fire Credit Union had not provided Ms. Thomason with information as to who endorsed the back of the \$250.54 check and ultimately received the funds. Tr. 20-21, 29-30.

In view of the above, I conclude that Judith Thomason failed to carry her burden of proving that PGW received her check, endorsed it and was ever in possession of her funds. She failed to carry her burden of proving by a preponderance of the evidence that PGW violated the Public Utility Code, or a Commission statute or order by refusing to credit her account in the amount of \$250.54. Consequently, the BCS decision at BCS Case # 3694222 shall be vacated.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. § 701.

2. In a *de novo* appeal from a decision of the BCS, the burden of proof remains with the party who filed the original informal complaint, except for legal or policy issues raised by the utility on appeal. See 52 Pa. Code § 56.173(f); see also *Rafferty v. Verizon Pa., Inc.*, Docket No. F-02211831 (Order entered December 22, 2008); *Claypool v. T. W. Phillips Gas & Oil Co.*, 1995 Pa. PUC LEXIS 160 (Order entered December 22, 1995).

3. It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" to its customers. 66 Pa.C.S. § 1501.

4. A public utility has an obligation of good faith, honesty and fair dealing in its performance and enforcement. 52 Pa. Code § 56.1.

5. Upon initiation of a dispute the public utility shall provide the customer or occupant with the information necessary for an informed judgment, including, but not limited to, relevant portions of tariffs, statements of account and results of meter tests. 52 Pa. Code § 56.151 (4).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint/Appeal of Philadelphia Gas Works at Docket No. F-2020-3019465 is sustained.

2. That the decision of the Bureau of Consumer Services at BCS Case # 3694222 sustaining Judith Thomason's informal complaint against Philadelphia Gas Works is vacated.

3. That the Secretary's Bureau shall mark Docket No. F-2020-3019465 closed.

Date: November 5, 2020

/s/
Eranda Vero
Administrative Law Judge