

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tikea Braxton	:	
	:	
v.	:	F-2020-3021152
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Tikea Braxton because she had dominion and control over the service address at all times relevant to this matter and, as such, is responsible for theft of service charges that accrued at the service address between March 3, 2015 and January 17, 2020.

HISTORY OF THE PROCEEDING

On July 13, 2020, Tikea Braxton (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “[o]ther,” next to which she wrote: that she moved out of her home in 2016; that she satisfied her unpaid balance in 2017; that when she went to pick up mail in January 2020 she discovered homeless people living in her home and smelled gas; that she called PGW and they discovered that the gas was on illegally; and that PGW subsequently billed her \$5,000 for the usage. As relief, the Complainant wants the Commission to “dismiss the bill” because she was not living in the home during the period the gas was on illegally, and that the gas was on without her knowledge.

On August 26, 2020, the Respondent filed an Answer averring: that City of Philadelphia records indicate the Complainant is the owner of the property at the Service Address as of October 24, 2008; that on April 30, 2014, PGW terminated the gas service at the Service address; that on January 17, 2020, PGW was contacted due to an odor of gas; that a PGW technician responded to the service call and found the gas on; that the service technician also discovered a tampered meter bypass; that the gas was shut off with multiple locking devices; and that on February 20, 2020, PGW held the Complainant responsible for the tampered meter bypass and billed her accordingly.

By Hearing Notice dated September 1, 2020, an Initial Telephonic Hearing was scheduled for October 6, 2020 at 10:00 a.m., and the matter was assigned to Administrative Law Judge (ALJ) Angela Jones.

ALJ Jones issued a Prehearing Order on September 27, 2020. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The telephonic hearing convened as scheduled before ALJ Jones on October 7, 2020. The Complainant appeared *pro se* and testified. The Respondent also appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Kevin Hopkins, a PGW field service technician, and Jessica Glace, a PGW Senior Customer Review Officer. The Respondent submitted five exhibits, all of which were admitted into the record (PGW Exhs. 1-5).

The record consists of an 83-page transcript and five exhibits. The record closed on November 2, 2020, when the Transcript was filed with the Commission.

By Judge Change Notice dated November 18, 2020, the matter was reassigned to me. This matter is ripe for disposition.

FINDINGS OF FACT

1. The Complainant in this case is Tikea Braxton.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant currently lives at 13 Courtyard Lane in Wilmington, Delaware. Tr. 11.
4. The Complainant has been the sole owner of 2012 Watkins Street in Philadelphia (service address) since 2008. Tr. 11-12, 27, 47; PGW Exh. 2.
5. The Complainant resided at the service address between 1999 and 2016. Tr. 28.
6. Between 2012 and April 30, 2014, gas service at the service address was in the name of the Complainant's uncle, Charles Braxton. Tr. 66-67.
7. On April 30, 2014, PGW terminated gas service at the service address for non-payment. Tr. 47; PGW Exh. 3.
8. PGW never restored gas service to the service address after the April 30, 2014 shut-off. Tr. 48.
9. On February 26, 2015, a PGW technician visited the service address as part of an unbilled usage investigation. Tr. 48; PGW Exh. 3.
10. The PGW technician found the gas on at the curb, shut the gas off at the curb, and re-curbed the service with an expander. Tr. 48-49; PGW Exh. 3.

11. On February 27, 2015, the Complainant contacted PGW to ask about service restoration terms. Tr. 49; PGW Exh. 3.
12. PGW advised the Complainant that, prior to restoration, a safety check would need to be completed at the service address. Tr. 49; PGW Exh. 3.
13. On March 3, 2015, a PGW Technician performed the safety check, during which he discovered that the electronic reader transmitter (ERT) portion of the Complainant's meter had been tampered with. Tr. 49-50, 58-59; PGW Exh. 3.
14. The PGW technician removed the meter and installed multiple locking devices. Tr. 49-50; PGW Exh. 3.
15. On March 9, 2015, the Complainant contacted PGW to ask about service restoration terms. Tr. 50-51; PGW Exh. 3.
16. PGW provided the Complainant terms for service restoration. Tr. 51.
17. On August 2, 2016, the Complainant moved out of the service address and into her current address. Tr. 12-13, 26.
18. On March 16, 2018, the Complainant visited a PGW office and paid the bill for unauthorized usage that occurred between April 30, 2014 and February 26, 2015 in full. Tr. 51; PGW Exh. 3.
19. PGW scheduled a turn-on appointment for March 21, 2018. Tr. 52; PGW Exh. 3.
20. On March 20, 2018, the Complainant called PGW and canceled the March 21, 2018 turn-on appointment. Tr. 52-53; PGW Exh. 3.

21. On April 3, 2018, the Complainant contacted PGW to inform them that she would call to reschedule a turn-on appointment after PECO restored service at the service address. Tr. 54; PGW Exh. 3.

22. The Complainant never contacted PGW to reschedule her turn-on appointment. Tr. 54.

23. The service address is not currently occupied. Tr. 12.

24. The Complainant still receives mail at the service address and goes there five days each week to retrieve her mail. Tr. 23-24, 29.

25. The Complainant would sometimes enter her house after retrieving her mail from the mailbox. Tr. 24-25, 29.

26. On January 17, 2020, the Complainant contacted PGW to report a gas odor at the service address in the kitchen area. Tr. 14, 21, 31, 55, 62-63; PGW Exh. 3.

27. On January 17, 2020, a PGW field service technician visited the service address to investigate the reported gas leak. Tr. 36; PGW Exh. 1.

28. The PGW field service technician discovered the gas on at the curb. Tr. 15, 37-38; PGW Exh. 1.

29. The PGW field service technician found a gas leak from the gas range when he went inside the service address. Tr. 38-39; PGW Exh. 1.

30. The PGW field service technician found that no meter was installed or present at the service address, and that a flex line connected PGW's head of service to the Complainant's fuel line. Tr. 38-40, 43; PGW Exh. 1.

31. The PGW field service technician installed locking plugs, removed an old-style expander from the curb box, and shut the gas off at the curb box with a new-style expander. Tr. 38-39, 41-43; PGW Exh. 1.

32. Following discovery of the meter bypass, the PGW field service technician initiated an unbilled usage investigation. Tr. 41.

33. The PGW field service technician found a gas heater, gas water heater and a gas range connected to the fuel line at the service address. Tr. 42; PGW Exh. 1.

34. PGW subsequently determined that theft of service took place at the service address between March 3, 2015, the date PGW performed a safety check after the first shut off for unauthorized usage, and January 17, 2020, the date of the second shut off for unauthorized usage. Tr. 55-56; PGW Exh. 4.

35. PGW subsequently billed the Complainant \$5,894.64 for unauthorized usage based on the most recent legitimate historical usage at the property. Tr. 56, 68; PGW Exh. 4.

DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 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.A. § 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 Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Phila. 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 Transp. 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 & W. Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemp't Comp. Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Cntr.*, 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 Complainant has challenged her responsibility for the balance that accrued at the service address after the gas was illegally restored. The Complainant maintained that she should not be held responsible for this balance because the unauthorized usage occurred due to alleged squatters who illegally moved into her property after she moved out. However, the Commission has found that a property owner having dominion and control over a service address is responsible to have known, or should have known, of tampering and theft of service occurring at the property. *Simmons v. UGI Utilities, Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018).

The Complainant, as the owner of the service address since 2008, had dominion and control over the property at all times relevant to this case. On her own acknowledgment, the Complainant visited the service address on a regular basis to retrieve her mail. The Complainant was aware, or should have been aware, that the gas service was on at the service address. If there were squatters living at the service address as the Complainant alleged, at the very least she should have made PGW aware of the situation so they could have investigated the possibility of unauthorized usage. The Complainant was responsible for ensuring that theft of PGW's gas service did not occur at the service address. Her failure in her duty to secure PGW's gas service leaves her responsible for the costs of unauthorized usage. PGW has not acted inappropriately by billing her for this unauthorized usage.

Accordingly, the Complainant's Complaint is denied.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S.A. § 332(a).

3. 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 Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704.

4. A property owner having dominion and control over a service address is responsible to have known, or should have known, of tampering and theft of service occurring at the property. *Simmons v. UGI Utilities, Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018).

