

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jonathan Pierre

v.

Philadelphia Gas Works

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F-2020-3021074

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Jonathan Pierre because he was unable to meet his burden of proving that he requested discontinuance of his gas service on March 1, 2019. Accordingly, he is responsible for the bills for gas services rendered to the service address between March 1, 2019 and June 3, 2019.

HISTORY OF THE PROCEEDING

On July 29, 2020, Jonathan Pierre (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 indicating “[i]ncorrect charges are on my bill,” next to which he typed in “[a]ll charges from March 1, 2019 and later are not my responsibility because I moved out of the property and PGW was informed of this.” As relief, the Complainant has asked that \$320.54 in charges be removed from his bill.

On August 18, 2020, the Respondent filed an Answer denying that there are incorrect charges on the bill for service at 1501 W. Girard Avenue, 3R, Philadelphia, PA (service address). The Respondent averred that on June 3, 2019, the Complainant called PGW to request a turn off, and that on June 4, 2019, an AMR turn off was issued as of June 3, 2019. The Respondent further averred that PGW does not have any record of a turn off request for the service address until June 3, 2019.

By Initial Telephonic Hearing Notice dated August 20, 2020, a call-in telephonic hearing was scheduled for October 7, 2020, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on August 26, 2020. The Prehearing Order advised of the date and time of the telephonic hearing as well as how to call in for the hearing. The Prehearing Order also 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 he is entitled to the relief requested in the Complaint.

The telephonic hearing convened as scheduled on October 7, 2020. The Complainant appeared *pro se* and testified. The Complainant offered one exhibit which was admitted into the record. The Respondent also appeared and was represented by Laureto Farinas, Esq., who presented the testimony of Patricia Bernard, a PGW Customer Review Officer. The Respondent submitted three exhibits, all of which were admitted into the record (PGW Exhs. 1-3).

The record consists of a 93-page transcript and four exhibits. The record closed on November 2, 2020, when the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Jonathan Pierre.
2. The Respondent in this case is Philadelphia Gas Works.

3. The Complainant currently resides at 1416 West Girard Avenue, Apartment 3F. Tr. 12.
4. The Complainant is not currently a PGW customer. Tr. 10.
5. The Complainant previously lived alone at 1501 West Girard Avenue, 3R (service address) from August 31, 2006 until March 1, 2019. Tr. 10, 20.
6. On March 1, 2019, the Complainant moved out of the service address. Tr. 10, 31.
7. The Complainant's telephone records demonstrate that he made a 20-minute call to a PGW telephone number on March 1, 2019. Tr. 16-17; Comp. Exh. 1.
8. PGW's contacts for the Complainant's account do not reflect that PGW received any calls from the Complainant on March 1, 2019. Tr. 39; PGW Exh. 1.
9. On June 3, 2019, the Complainant called PGW in response to information he received from PGW in the mail. Tr. 18; PGW Exh. 1.
10. During the June 3, 2019 call, the Complainant learned he was responsible for gas bills that accrued at the service address after March 1, 2019. Tr. 18-19.
11. During the June 3, 2019 call, the Complainant requested that gas service to the service address be shut off. Tr. 39-40, 58; PGW Exh. 1.
12. When a customer calls PGW to request service termination, the answering call representative must make a notation in PGW's AIM system. Tr. 40-41.
13. PGW cannot initiate a customer's service termination request without making a notation on the customer's account. Tr. 41, 51.

14. On June 3, 2019, PGW notated the Complainant's gas discontinuance request on his account for service. PGW Exh. 1.

15. The Complainant's final balance on the account for service totals \$320.54. Tr. 19; PGW Exh. 2.

16. The Complainant has not paid this final balance. Tr. 19.

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, the 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, the Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tele. 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. Pa. 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).

Regarding responsibility for charges for services rendered, Commission regulations provide, in pertinent part, that:

(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. . . .

52 Pa.Code § 56.16(a).

In the present case, the Complainant insists that he called PGW on March 1, 2019, to request discontinuance of service. However, although the Complainant's phone records show that he made a call to a PGW telephone number on that date, there is nothing else in the record to demonstrate that he requested discontinuance of his gas service on that date, or that he spoke to a call center representative.

Contrary to the Complainant's position, PGW's records do not reflect that he spoke with a call center representative on March 1, 2019. Moreover, PGW's records reflect that the

Complainant did not actually request termination of his gas service until June 3, 2019. The Complainant was not able to rebut this evidence.

Pursuant to 52 Pa.Code § 56.16(a), the Complainant is responsible for the bills for gas services rendered to the service address between March 1, 2019 and June 3, 2019, the date that he requested discontinuance of service. 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 Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704.

4. 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).

5. The Complainant is responsible for the bills for gas services rendered to the service address between March 1, 2019 and June 3, 2019.

