

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melaku Asmamaw	:	
	:	
v.	:	F-2020-3022405
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision grants in part, and denies in part, the Complaint of Melaku Asmamaw. The Complaint is granted in that the Complainant is not responsible for unauthorized usage charges that accrued at the service address between August 22, 2016 and July 17, 2019. The Complaint is denied in that the Complainant is responsible for unauthorized usage charges that accrued at the service address between July 18, 2019 and February 7, 2020 because he had dominion and control over the service address during this period and, as such, is responsible for theft of service charges that accrued at the service address between those dates.

HISTORY OF THE PROCEEDING

On October 3, 2020, Melaku Asmamaw (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.” The Complainant further indicated on the Complaint form that the bill belongs to a former tenant, Jamila Broadnax, who lived at the property

from June 1, 2007 to July 18, 2019. As relief, the Complainant has requested that the bill be taken out of his name and that PGW seek payment from the former tenant.¹

On November 9, 2020, the Respondent filed an Answer denying that there are incorrect charges on the bill for the service at 6147 Grays Avenue, Philadelphia, PA (service address).

By Initial Telephonic Hearing Notice dated November 9, 2020, a call-in telephonic hearing was scheduled for January 6, 2021 at 10:00 a.m., and the matter was assigned to Administrative Law Judge (ALJ) F. Joseph Brady.

ALJ Brady issued a Prehearing Order on December 4, 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 he is entitled to the relief requested in the Complaint.

By Judge Change Notice dated December 29, 2020, the matter was reassigned to me. The December 29, 2020 Notice advised that the hearing date and time would remain unchanged.

The telephonic hearing convened as scheduled on January 6, 2021. The Complainant appeared *pro se*. Counsel for PGW was present with a witness and was prepared to proceed. The Complainant requested additional time to secure legal representation for his hearing. Counsel for PGW did not object to the Complainant's request, so I granted his request on the record. I subsequently issued an Order Continuing Hearing that same day.

By Cancelled/Rescheduled Hearing Notice dated January 7, 2021, a call-in telephonic hearing was scheduled for February 23, 2021 at 10:00 a.m.

¹ This formal Complaint is a timely appeal from a determination of the Bureau of Consumer Services (BCS) dated September 10, 2020 at BCS docket number 3769624. Review of a BCS determination is *de novo*. 52 Pa. Code § 56.173(a).

The telephonic hearing convened as scheduled on February 23, 2021. The Complainant again appeared *pro se*. No one appeared on behalf of PGW. As the party with the burden of proof, Mr. Asmamaw requested a second continuance to obtain legal representation to assist him with his Complaint, since the COVID-19 pandemic hindered his ability to secure representation. Under the circumstances, I determined good cause existed for a second continuance and granted his request. I did advise the Complainant that, whether or not he secured legal representation, the hearing would proceed when we reconvened. I subsequently issued my Second Order Continuing Hearing that same day.

By Cancelled/Rescheduled Hearing Notice dated February 23, 2021, a call-in telephonic hearing was scheduled for April 22, 2021 at 10:00 a.m.

The telephonic hearing convened as scheduled on April 22, 2021. The Complainant appeared *pro se*. The Complainant offered four exhibits, all of which were admitted into the record (Comp. Exhs. 1 through 4). The Respondent also appeared and was represented by Laureto Farinas, Esq., who presented the testimony of Wendy Vacca, a PGW Senior Customer Review Officer, and Try Meas, a PGW Field Service Technician. The Respondent submitted five exhibits, all of which were admitted into the record (PGW Exhs. 1 through 5).

The record consists of a 112-page transcript and nine (9) exhibits. The record closed on May 27, 2021, when the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Melaku Asmamaw.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant resides at 6135 Grays Avenue, Philadelphia, PA and is a PGW customer at that address. Tr. 23-24.

4. The Complainant's Complaint concerns a row-home located at 6147 Grays Avenue, Philadelphia, PA (service address). Tr. 24-25.

5. The Complainant lives on the same street as the service address, approximately five houses away. Tr. 25.

6. The Complainant has owned the service address since May 31, 2006. Tr. 25.

7. Jamila Broadnax was the Complainant's tenant at the service address from 2007 until approximately July 18, 2019. Tr. 26-27, 40-42, 57-58; Comp. Exh. 4.

8. During the period Ms. Broadnax resided at the service address, the Complainant would not enter the service address unless Ms. Broadnax alerted him to a problem that needed to be addressed. Tr. 29, 35.

9. Ms. Broadnax was the previous PGW customer of record at the service address. Tr. 74-75.

10. On May 31, 2016, PGW shut off Ms. Broadnax's gas service for non-payment. Tr. 75, 85; PGW Exh. 1.

11. Ms. Broadnax never re-established gas service with PGW. Tr. 85.

12. On August 22, 2016, PGW visited the property for a curb-valve safety recheck, at which time PGW discovered that the gas had been turned back on by someone other than PGW. Tr. 75; PGW Exh. 1.

13. PGW turned the gas off again and re-curbed the service with an expander. Tr. 75; PGW Exh. 1.

14. In May 2019, Ms. Broadnax stopped paying rent to the Complainant. Tr. 50, 52, 54.

15. On an undisclosed date, Ms. Broadnax moved out of the service address without providing any notice to the Complainant. Tr. 40, 56.

16. On July 18, 2019, the Complainant confirmed that Ms. Broadnax vacated the service address. Tr. 27, 41-42, 57-58; Comp. Exh., 4.

17. After the Complainant confirmed that Ms. Broadnax moved out of the service address, he had extensive repairs completed at the property. Tr. 32, 36, 57.

18. The repairs the Complainant had done at the service address took approximately seven months to complete. Tr. 36.

19. On or about January 1, 2020, a new tenant moved into the service address. Tr. 32.

20. On January 21, 2020, the Complainant contacted PGW to request that gas service be placed in the name of his new tenant. Tr. 31.

21. On February 7, 2020, a PGW technician visited the service address on an unbilled usage investigation. Tr. 33, 75; PGW Exh. 2.

22. The PGW technician discovered that the gas service had been turned back on at the curb box by someone other than a PGW employee. Tr. 75, 94; PGW Exh. 2.

23. The Complainant was present during the PGW Technician's visit and gave him access to the basement. Tr. 33, 94, 99; PGW Exh. 2.

24. An Electronic Reading Transmitter (ERT) measures the consumption of gas and provides PGW with readings of gas usage for billing purposes. Tr. 95-96.

25. The ERT should be attached to the front of the meter. Tr. 96, 101.
26. The PGW technician found the ERT had been removed from the front of the meter and placed on top. Tr. 94-96, 101; PGW Exh. 2.
27. Removal of the ERT resulted in a bypass that allowed gas to flow through the meter without being detected. Tr. 96.
28. Removal of the ERT prevented PGW from obtaining gas consumption readings at the service address. Tr. 101.
29. The service address is equipped with a 100,000 BTU gas heater, a 34,000 BTU gas water heater, and a 60,000 BTU gas stove. Tr. 37, 97.
30. The PGW technician determined that the gas appliances at the service address were functioning. Tr. 97.
31. The PGW technician examined the curb box and found the old expander in place. Tr. 99; PGW Exh. 2.
32. The PGW technician removed the old expander and found the curb valve on. Tr. 99; PGW Exh. 2.
33. The PGW technician turned the gas off and installed locking plugs. Tr. 98; PGW Exh. 2.
34. PGW subsequently determined that the Complainant was responsible for \$6,246.73 in unauthorized usage for the period from August 22, 2016 through February 7, 2020. Tr. 35, 76, 78; Comp. Exh. 1, PGW Exhs. 3 & 4.
35. PGW based the bill for unauthorized usage at the service address on the historic period from June 25, 2014 through June 24, 2015. Tr. 77; PGW Exh. 3.

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 (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 his responsibility for the balance that accrued at the service address after the gas was illegally restored. The Complainant maintained that he should not be held responsible for this balance because the unauthorized usage occurred while his former tenant was occupying the service address.

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 Utils., Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018). While the Complainant has owned the service address since May 31, 2006, he did not have dominion and control over the property at all times relevant to this case. The Complainant's former tenant, Jamila Broadnax, resided at the service address from 2007 until approximately July 2019. Tr. 26, 40. During that period, Ms. Broadnax had dominion and control over the service address. The Complainant testified credibly that he would not enter the service address during this period unless Ms. Broadnax alerted him to a problem that needed to be addressed. Tr. 29.

Although the Complainant did not have dominion and control over the service address prior to Ms. Broadnax's departure, he did have dominion and control over the service address once he confirmed on July 18, 2019 that she had vacated the property. Tr. 27; Comp. Exh. 4. The record reflects that after Ms. Broadnax moved out, the Complainant had extensive repairs completed at the property. Tr. 32, 36, 57. Moreover, the Complainant indicated that it took approximately seven months to complete these repairs. Tr. 36. Under these circumstances, I conclude that the Complainant had dominion and control over the service address after he confirmed Ms. Broadnax moved out on July 18, 2019.

The Complainant was responsible for ensuring that theft of PGW's gas service did not occur at the service address once he regained dominion and control over the property. His failure in his duty to secure PGW's gas service leaves him responsible for the costs of unauthorized usage that occurred between July 18, 2019 and February 7, 2020. PGW may bill

the Complainant for this period of unauthorized usage. Accordingly, the Complainant's Complaint is granted in part and denied in part.

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 Utils., Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018).

5. PGW may hold the Complainant, the property owner, responsible for theft of service charges that accrued at the service address between July 18, 2019 and February 7, 2020.

