



PHILADELPHIA GAS WORKS

800 West Montgomery Avenue • Philadelphia, PA 19122

Danielle Leva, Paralegal
Legal Department
Direct Dial: 215-684-6862
FAX: 215-684-6798
E-mail: danielle.leva@pgworks.com

September 7, 2021

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Melaku Asmamaw v. PGW, Docket No. F-2020-3022405

Dear Secretary Chiavetta:

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files the original of its exceptions to the August 17, 2021, Initial Decision in the above captioned matter.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,

Danielle Leva

Enclosure

CC: Melaku Asmamaw (Melakuab2015@gmail.com)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melaku Asmamaw,	:
Complainant	:
v.	: Docket No. F-2020-3022405
	:
Philadelphia Gas Works,	:
Respondent	:

**PHILADELPHIA GAS WORKS’
EXCEPTIONS TO THE INITIAL DECISION**

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works, (“PGW”) hereby files its exceptions (“Exceptions”), to the Initial Decision issued August 17, 2021 in the above captioned matter (“Initial Decision”).

I. INTRODUCTION

This matter is a dispute of a bill charged to the Complainant for unauthorized gas usage at a rental property located at 6147 Grays Avenue (“Service Address”) a row home, leased to a tenant five doors away from the residence of the Complainant (6135 Grays Avenue, Philadelphia, PA. PGW billed the Complainant \$6,246 for unauthorized usage for the period from August 22, 2016 to February 7, 2020. The Initial Decision denied in part and granted in part the Complaint. The Initial Decision granted the Complaint 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 Initial Decision denied the Complaint in that the Complainant is responsible for unauthorized usage charges at the Service Address for the period from July 18, 2019 through February 7, 2020.¹ This distinction is made on the basis that the Complainant did not have “dominion and control” over the Service Address for the period that the tenant occupied the Service Address.

PGW takes exception to the Initial Decision’s finding that the Complainant did not have “dominion and control” for the period when the tenant occupied the Service Address. The Complainant did not surrender his dominion and control of the Service Address merely was occupied by a tenant under a lease.

HISTORY OF THE PROCEEDING

On October 3, 2020, the Complainant filed a Complaint with the Commission against PGW. The Complaint disputes the charges on his account for unauthorized usage. The Complainant maintains that the responsibility for payment of the charges belongs to the Complainant's former tenant.

On November 9, 2020, PGW filed a timely Answer denying all material allegations of fact and conclusions of law in the Complaint. PGW also stated that the Complainant was properly billed for the unauthorized usage that was the result of a bypass of the metering at the Service Address.

At the request of the Complainant, PGW did not object to two continuances to allow the Complainant to seek counsel. After some rescheduling, by notice dated February 23, 2021, a hearing of the matter convened as rescheduled on April 22, 2021. The Complainant appear *pro se*. The Complainant represented himself and presented four exhibits. PGW was represented by counsel and presented two witnesses who sponsored five exhibits. All exhibits were admitted into the record of the proceeding

On August 17, 2021, the Commission issued the Initial Decision finding in part for PGW and in part for the Complainant. The Initial Decision granted the Complaint 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 Initial Decision denied the Complaint in that the Complainant is responsible for unauthorized usage charges at the Service Address for the period from July 18, 2019 through February 7, 2020. PGW's Exceptions follow:

II. PGW'S EXCEPTION

PGW takes exception to Ordering Paragraph 2 and the Finding the Complainant is not responsible for unauthorized usage charges that accrued at the Service Address between August 22, 2016 and July 17, 2019, as this finding is are not supported by substantial evidence and existing case law.²

¹ Initial Decision, p. 1

² Initial Decision, pp. 1 and 10

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 i.e. overbilling for unauthorized usage. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa.P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa.P.U.C. 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.Cmwlt. 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).

PGW takes exception to Ordering Paragraph 2 and the Finding the Complainant is not responsible for unauthorized usage charges that accrued at the Service Address between August 22, 2016 and July 17, 2019, as this finding is not supported by substantial evidence and existing case law.

In this case the Complainant purchased the Service Address in May 2006.³ The Complainant leased the Service Address to a tenant, Jamila Broadnax in 2007.⁴ The tenant occupied the Service Address until July 2019. During the period of the tenant's occupation the Complainant would not have entered the Service Address unless the tenant alerted the Complainant to a problem.⁵

The Initial Decision reaches the result that the Complainant is not responsible for the unauthorized usage for the period from August 22, 2016 and July 17, 2019 because the Complainant did not have dominion and control of the Service Address. This is based upon a reading of *Simmon v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018)

In *Simon*, the three Complainants (owner, owner's power of attorney and tenant) were each found to have had a period of dominion and control over the property. 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. Although Simon was incarcerated for a portion

³ Finding of Fact No. 6 and Tr. 25

⁴ Finding of Fact No. 7 and Comp. Exh 4.

⁵ Finding of Fact No. 8 and Tr. 29, 35.

of the period of the unauthorized usage, the three were held responsible for the entire amount of unauthorized usage. The Commission made no division of responsibility for the periods of dominion and control.⁶

In this matter, the Complainant who lived five houses away from his tenant was not barred from access to the Service Address by the tenant. The Complainant has a reasonable right to inspect his property as any owner would during the term of a lease. Even though the Complainant was not called by the tenant to inspect the property, the lack of request to do so relieve the Complainant to see to the general condition of the property and the protection of the condition of utility equipment services from problems and abuse. The Complainant did not surrender his complete dominion and control of the Service Address with the leasing of it. The Complainant failed to show that the tenant prevented him from inspection of the condition of the Service Address, particularly the utility services that were the subject of tampering and unauthorized usage. The Complainant retained a measure of dominion and control over the Service Address and should not be relieved from his responsibility for the unauthorized usage.

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). 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. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

⁶ *Simmon v. UGI Utils., Inc.*, pp. 19 - 20

III. CONCLUSION

For the reasons stated above, the Commission should dismiss the Complainant in its entirety.

Respectfully submitted,

September 7, 2021

/s/ Laureto Farinas
Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

MELAKU ASMAMAW
6135 GRAYS AVE
PHILADELPHIA PA 19142

melakuab2015@gmail.com

September 7, 2021

/s/ Laureto Farinas
Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122