

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Latia Walker	:	
	:	
v.	:	F-2021-3028044
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

The Complainant contests a bill for unauthorized use of service for the period 2007-2021. This decision sustains the claim with respect to years 2007-2015 and denies the claim for the years 2016-2021. The Complainant’s request for a payment arrangement is denied.

HISTORY OF THE PROCEEDING

On July 28, 2021, Latia Walker (Complainant or Ms. Walker) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). She states in the Complaint that her service is off and that she believes that PGW has failed to comply with U.S. Department of Transportation regulations, Code of Federal Regulations (“C.F.R.”) sections 192.465, 192.481 and 192.723. 49 C.F.R. §§ 192.465, 192.481, 192.723 (2021). She alleges that these regulations require PGW to routinely inspect natural gas service lines once every three years. She avers that if PGW had conducted these inspections timely, she would not now be accountable for services since 2007.

Ms. Walker also states in the Complaint that she knows that she is responsible for the balance because she is the owner of the property but objects to the amount PGW asserts that she owes, \$18,672.81, because it is a “guesstimate.” Complaint, p. 2. As relief, the Complainant is asking the Commission to limit PGW’s recovery to three years of services due to PGW’s failure to inspect its facilities as required under the C.F.R.. She would also like a payment arrangement.

On September 24, 2021, PGW filed an Answer. In the Answer, PGW states that the Complainant had gas service in her name from October 16, 1999 to October 11, 2007 when service was terminated for non-payment. PGW further asserts that on April 9, 2021, PGW visited the property and discovered theft of service. The meter was then removed, and the gas service was left off with an anti-theft device. The Complainant was subsequently billed for \$18,672,81.

An Initial Call-In Telephonic Hearing Notice dated September 29, 2021, notified the parties that the case was scheduled for an initial hearing on November 10, 2021, at 10:00 a.m.

A Prehearing Order was issued on September 29, 2021, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on November 10, 2021. Ms. Walker appeared *pro se* and testified on her own behalf. PGW was represented by Graciela Christlieb, Esq. Three witnesses testified on behalf of PGW: Curt McKee, PGW Field Service Department technician; Albert Tedi, PGW Revenue Protection Unit Supervisor; and Jessica Glace, PGW Senior Customer Review Officer.

Near the end of the hearing, PGW was asked to submit a memorandum of law on the liability of owners for outstanding utility services balances by December 10, 2021. The Complainant was given until December 20, 2021 to file a response. Tr. 87.

The following Exhibits were admitted into the record:

Complainant

- 1 - (Letter to Walker, "Your gas has been shut off")
- 2 - (Gas Safety Inspections: what you need to know!) (Complaint attachment)

PGW

- 1 - (Deed for 1433 Higbee Street)
- 2 - (Utility Service Agreement)
- 3 - (10/11/2007 Service Order Completion)
- 4 - (Meter Reclamation Program & Unbilled Usage Investigation)
- 5 - (Theft Reporting Information)
- 6 - (Degree Days Calculator and Premise Billing History)
- 7 - (6/16/2021 PGW Letter to Latia Walker)
- 8 - (BCS Decision on Informal Complaint)

On December 8, 2021, PGW filed a Motion to Admit Exhibit in which PGW sought admission of the entire Complaint rather than one of the attachments to the Complaint as introduced by the Complainant as Complainant Exhibit 2. On December 10, 2021, PGW filed a Memorandum of Law on owner responsibility for outstanding utility service balances. The Complainant was directed to file a response to both the PGW Motion to Admit Exhibits and Memorandum of Law by January 7, 2022.

On January 3, 2022, the Complainant filed a response to PGW 's Memorandum of Law. On January 12, 2022, Complainant sent an email stating that she had no objection to PGW's Motion to Admit Exhibits. The Exhibit will be marked PGW Exhibit 9 and will be admitted in an ordering paragraph below.

The record closed on January 12, 2022, the day Complainant filed a response to PGW's Motion to Admit Exhibits, and includes a 91-page transcript.

FINDINGS OF FACT

1. The Complainant is Latia Walker.

2. The Respondent is Philadelphia Gas Works.
3. Ms. Walker purchased her home on Higbee Street in Philadelphia, Pennsylvania (“service address”), a three-bedroom, one-and-a-half bath, row house, in 1999. Tr. 6.
4. Ms. Walker resided at the service address from 1999 to 2016. Tr. 6-7.
5. Ms. Walker was a PGW customer until 2007. Tr. 12.
6. The Complainant's gas service was turned off on October 11, 2007 for nonpayment. Tr. 12, 53; PGW Exhibit 3.
7. The Complainant used a hot plate for cooking from 2007 until 2016 when she moved out. Tr. 12.
8. The Complainant's gas water heater did not work after the gas was turned off. Tr. 12.
9. From 2007 to 2016, the Complainant used electric space heaters for heat. Tr. 12.
10. When the Complainant moved out of the property, her relatives who needed a place to live moved into the property. Tr. 15.
11. The Complainant has continuously used the service address as her mailing address and the water and electric services have remained in her name. Tr. 35.
12. On April 9, 2021, PGW Field Service employee Curt McKee visited the service address pursuant to the PGW Meter Reclamation Program. PGW Exhibit 7; Tr. 38.

13. While at the service address on April 9, 2021, Mr. McKee changed the meter reclamation order to an unbilled usage investigation after he found the gas service on and a meter bypass, which would prevent registration of gas usage. PGW Exhibits 4,7; Tr. 39, 62-63.

14. The gas at the service address was shut off for theft of service on April 9, 2021. Complainant Exhibit 1.

15. When Complainant returned to the service address in May 2021, the gas was off. Tr. 6-7, 9.

16. The family members moved out of the service address about a month after the Complainant moved in, approximately June 2021. Tr. 16.

17. PGW billed the Complainant \$18,672.81, calculated based on historical usage, for the period October 11, 2007 through April 9, 2021 as theft of service. PGW Exhibit 6; Tr. 65-66.

DISCUSSION

Ms. Walker challenges a PGW bill for \$18,672.81. She contends that it is a “guestimate” and believes that PGW “dropped the ball” and has some responsibility for not conducting mandatory inspections every three years, referencing U.S. Department of Transportation Regulations C.F.R. sections 192.465, 192.481, and 192.723. 49 C.F.R. §§ 192.465, 192.481, 192.723 (2021). She contends that any recovery should be limited to three years because PGW should have conducted an inspection every three years rather than waiting 14 years to collect and that PGW should have shut off the service years ago Tr. 7-9. She is also seeking a payment arrangement.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Phila. Elec. Co.*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission

explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. W. Penn Power Co.*, 1994 Pa. PUC LEXIS 95, *vacated* on other grounds, 666 A.2d 744 (Pa. Cmwlth. 1995) (*Poorbaugh*). 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. Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa. 1992). 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) (*Milkie*).

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 & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

When there is meter tampering, a utility may immediately terminate service. 52 Pa. Code § 56.98(a)(3). The PGW tariff also provides that service may be terminated for unauthorized use. *See* Supplement No. 21, PGW Gas Service Tariff -- Pa. P.U.C. No. 2, First Revised Page No. 38

PGW may seek payment for gas used when there is meter tampering. Philadelphia Gas Works Gas Service Tariff PA. P.U.C. No. 2 at § 8.3 provides:

[i]n the event of the Company's meters or other property being tampered or interfered with, the Customer being supplied through such equipment shall pay the amount which the Company may estimate is due for service used even if such usage is not registered on the Company's meter, and for any repairs or replacements required, as well as for costs of inspections, investigations, damages and protective equipment and installations prior to reconnection.

Supplement No. 21, PGW Gas Service Tariff -- Pa. P.U.C. No. 2, First Revised Page No. 44; PGW Exhibit 7.

Where it is determined that a customer has used gas supplied by PGW, PGW is entitled to be paid for the gas used. *Berry v. Phila. Gas Works*, Docket No. F-01184412 (Opinion and Order entered April 15, 2004) (*Berry*). The make-up bills, those issued to collect previously unbilled service, are generally limited to a four-year period. 52 Pa. Code § 56.35(a)(1); *Lewis v. Phila. Gas Works*, Docket No. F-2010-2171442 (Opinion and Order entered July 14, 2011) 2011 Pa. PUC LEXIS 1701 . Where the customer is involved with theft of service or other culpable acts leading to the underbilling, the four-year period is not applicable. 52 Pa. Code § 56.35(b)(1); *Angie's Bar v. Duquesne Light Co.*, 72 Pa. PUC 213 (1990).

Analysis

The Complainant questions the \$18,672.81 PGW seeks to collect for theft of service over a 14-year period, 2007-2021. There was clearly theft of service at the service address. PGW shut off gas at the service address on October 11, 2007. On April 9, 2021, PGW Field Service employee McKee, while acting on a Meter Reclamation order, discovered the gas was on at Complainant's property, and that gas appliances were consuming the gas. PGW then shut off the gas again and put in place antitheft measures. Complainant Exhibit 1, PGW Exhibit 7, Tr. 38-40. PGW is entitled to be paid for gas that it has supplied. *Berry*.

In accordance with its tariff, PGW may estimate the amount of that recovery. *See Philadelphia Gas Works Gas Service Tariff PA. P.U.C. No. 2 at § 8.* A public utility's

Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. *Ferguson v. Phila. Gas Works*, Docket Number C-2017-2591174 (Opinion and Order entered June 14, 2018) (citing 66 Pa. C.S. § 316, *Kossman v. Pa. Pub. Util. Comm 'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997)); and *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977).

PGW has billed the Complainant \$18,672.81 for estimated unauthorized use of gas from October 11, 2007, when the service address gas was shut off, through April 9, 2021, the date the company found the gas on and shut it off again. The foremost question presented by the Complainant, however, is for what period may PGW recover. Ms. Walker also seeks a payment arrangement on any outstanding amount.

Regulations and Inspections

The Complainant alleged that PGW failed to comply with C.F.R. sections 192.465, 192.481 and 192.723. 49 C.F.R. §§ 192.465, 192.481, 192.723 (2021). *See* Complainant Exhibit 2. The Complainant avers that had PGW conducted inspections required by these sections, and if the gas was on illegally, the company would have discovered usage and shut off the gas service years earlier rather than issue a large bill 14 years later based on an estimate of probable usage. Tr. 7-9. She argues that PGW's recovery for theft of service should be limited to three years because the company did not conduct inspections as required under these regulations that require periodic inspections of gas facilities. It is the Complainant's contention that if the gas was on, PGW would have discovered it earlier.

The Commission adopted the Initial Decision in *Phila. Gas Works v. William Madison*, Docket No. F-2017-2611805 (Initial Decision issued May 25, 2018; Final Order entered July 12, 2018), which held that a leak survey is not designed to identify unauthorized usage and, as such, should not serve to limit the time period of unauthorized usage at a service address. *Id.*, Initial Decision at 11. The federal regulations referenced by the Complainant require inspection of gas facilities for external corrosion control (49 C.F.R. § 192.465); atmospheric corrosion control (49 C.F.R. § 192.481) and distribution system leakage (49 C.F.R.

192.723). 49 C.F.R. §§ 192.465, 192.481, 192.723 (2021). Whether PGW conducted inspections or surveys in compliance with the federal regulations referenced also have no bearing on the theft of service charges here.

Period of Unauthorized Use of Gas

The Complainant contends that there is no basis for the bill, and that the gas was not on for the period she resided at the property after the shut off in 2007. She argues that it is almost impossible for her to prove that something did not occur. As she testified, “[t]he fact that that inspection was not done it puts me in a hard place trying to prove that it was not on for all of that time. In fact, I don't have a way to prove [...] anything. I don't -- I don't know how I can prove that.” Tr. 9.

The courts recognized a similar burden on customers in high bill complaints. In *Waldron* and its progeny, *Milkie*, it was determined that a customer may prove his or her case by circumstantial evidence. The Commission may consider “*any other relevant facts or circumstances that come to light during the proceeding.*” *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197, at 5 (Opinion and Order entered November 15, 2011) (emphasis added). All relevant facts and circumstances are considered herein.

1. 2007-2016

The Complainant credibly testified, and with great detail, that she did without gas service after it was shut off in 2007 and how she managed. She stated that doing without gas was possible because she was employed in a job where she spent a lot of time at the office. She testified that for cooking, she used an electric hot plate and air fryer. As Ms. Walker explained:

I had hot plates. I had space heaters -- not space heaters but little fan heaters because I'm deathly afraid of kerosene heaters, and I had to use little coffee pots that you heat up water with. I mean, my life is basically a work-around. I'm the kind of person if I get set in a routine, I'm in the routine. . .

Tr. 12.

The Complainant used electric heat when she was at home. She also testified that she sought PGW service in 2021 because, due to Covid-19 restrictions and limitations, she is working from home permanently. Tr. 12, 25 -26. She further stated that she now needs gas service because her elderly mother now lives with her and needs heat. Tr. 25-27. This testimony was credible and established that it is more probable than not that the Complainant did not use gas from 2007 through 2015.

2. 2016-2021

The Complainant has not established that there was not unauthorized use of gas after she moved out of the service address for which the Complainant is responsible. The Commission held in *Simmons v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Opinion and Order entered July 12, 2018), 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.

The Complainant testified that when she moved out of the service address in 2016, some of her relatives moved in. Tr. 15. She allowed relatives who needed a place to stay to move into her property so that it would not be unattended. Tr. 19. In April 2021, PGW discovered the unauthorized use of gas and shut it off. Tr. 35, 38; PGW Exhibit 7. The Complainant credibly testified that she did not move back into the service address until May 2021.¹ However, the Complainant also testified that she used the service address as her mailing address and received paychecks electronically and that the water and electric service remained on in her name for the entire period at issue. Tr.33-34. The Complainant had dominion and control over the service address after she moved out. Therefore, the Complainant is responsible for the estimated gas charges from 2016 to present.²

¹ Ms. Walker testified that after moving out of the service address, she lived in Delaware with her sister, for a short period in India as part of her employment and, when she returned, with a cousin before moving back into the service address. Tr. 31-34.

² The Complainant does not recall the exact date that she moved out in 2016 and therefore the Complainant will be held responsible for the entire year of 2016.

Payment Arrangement

The Complainant is seeking a payment arrangement. In *Fassett v. Phila. Elec. Co.*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015) the Commission stated that it did not believe a payment arrangement was appropriate when the applicant was involved in theft of utility service while a resident at the service location. In the present matter, no record evidence established that there was not theft of service from 2016 to 2021. Although the Complainant did not reside at the service address when the theft of service began and was not involved in the theft of service, awarding the Complainant a payment arrangement is not appropriate here.

The Commission may exercise its discretion to issue payment arrangements only on behalf of those who have demonstrated some evidence of a good faith effort to pay their utility bills. *Mercer v Phila. Gas Works*, Docket No. C-2018-3004601 (Opinion and Order entered September 19, 2019) (citing *Crawford v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007)).

Here, the Complainant's gas service at the service address was terminated for nonpayment in 2007. Tr. 18. The Complainant also acknowledged during her testimony that she had previous payment arrangements with PGW that were not kept. (Tr. 17-18). These facts do not establish a good faith effort to pay the PGW bills in the past. Therefore, the request for a payment arrangement from the Commission is denied.³

CONCLUSIONS OF LAW

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

³ This decision does not prevent the parties from discussing and reaching a payment arrangement between PGW and Ms. Walker.

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

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. The service address used gas supplied by PGW and PGW is entitled to be paid for the gas used. *Berry v. Phila. Gas Works*, F-01184412, 2004 Pa. PUC LEXIS 27, (Order entered April 15, 2004).

5. PGW lawfully terminated service on April 9, 2021 for unauthorized use. 52 Pa. Code § 56.98(a)(3).

6. As a condition of restoring service to a customer, the public utility can require the payment of the outstanding balance and the four-year statute of limitations does not apply to instances of fraud or theft. 52 Pa. Code § 56.191(d).

7. The Complainant established that there was no theft of service and that gas was not used at the service address from October 11, 2007 through December 2015. *Thomas v. PECO Energy Co.*, Docket No. C-2010-2187197 (Opinion and Order entered November 15, 2011)

8. The preponderance of the evidence established that PGW's meter at the service address was being tampered or interfered with and there was unauthorized use of service from 2016 through service shut-off on April 9, 2021. *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).

9. The Complainant had dominion and control over the service address at the time of unauthorized use of PGW service, shall pay the amount that PGW may estimate is

due for service used for that period. *Simmons v. UGI Utilities, Inc.*, Docket No. C-2017-2605783 (Opinion and Order entered July 12, 2018).

10. A public utility's Commission-approved tariff is *prima facie* reasonable, has the full force of law and is binding on the utility and the customer. *Ferguson v. Phila. Gas Works*, Docket Number C-2017-2591174 (Opinion and Order entered June 14, 2018) n.9.

11. Leak surveys and inspection requirements are not designed to identify unauthorized usage and, as such, should not serve to limit the time period of unauthorized usage at the service address. *Phila. Gas Works v. Madison*, Docket No. F-2017-2611805 (Initial Decision issued May 25, 2018; Opinion and Order entered July 12, 2018).

12. A payment arrangement is not appropriate here where a good faith effort to pay PGW bills is absent. *Crawford v. Nat'l Fuel Gas Distrib. Corp.*, Docket No. C-20066348 (Opinion and Order entered December 6, 2007).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Work's Motion to Admit Exhibit at Docket No. F-2021-3028044 is granted.

2. That PGW Exhibit 9 – the Complaint with all attachments – is admitted into the record at Docket No. F-2021-3028044.

3. That the formal Complaint filed by Latia Walker against Philadelphia Gas Works at Docket No. F-2021-3028044 is granted, in part, and denied, in part.

4. That within 30 days of the final order in this matter, PGW shall recalculate the Complainant's bill for unauthorized usage excluding the years 2007-2015 and issue a bill to the Complainant.

5. That the claim for a payment arrangement is denied.

6. That the Secretary's Bureau mark this matter closed.

Date: April 8, 2022

_____/s/
Darlene Heep
Administrative Law Judge