

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sandra Lopez	:	
	:	
v.	:	F-2023-3037609
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Sandra Lopez’ Formal Complaint because she failed to sustain her burden of proving that Philadelphia Gas Works wrongfully assessed her theft of service charges for the period December 6, 2017, to May 1, 2021.

HISTORY OF THE PROCEEDING

On December 22, 2022, Sandra Lopez (Complainant or Ms. Lopez) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the Respondent improperly assessed theft of service charges against her. As relief, Ms. Lopez requested that the Commission order PGW to rescind the gas bill issued to her for unmetered gas usage.

This Formal Complaint is a timely appeal of a decision issued by the Commission’s Bureau of Consumer Services at BCS Case No. 3880128.

On February 3, 2023, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated February 7, 2023, notified the parties that the initial call-in telephonic hearing in this matter was scheduled to take place on March 29, 2023, at 10:00 a.m.

A Prehearing Order was issued on February 23, 2023, 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 March 29, 2023. Sandra Lopez appeared *pro se* and testified in support of the Complaint. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of Jessica Glace, who is the manager of the Customer Review Unit for PGW, and of Dwayne Patrick, who is a field service technician for PGW. Respondent sponsored 15 exhibits, all of which were admitted into the record.

During the hearing, Ms. Lopez requested and was provided an opportunity to submit copies of bank statements and/or check cashing records to substantiate her claim that she was a paying customer of PGW during the period November 2017 – April 2021.

In addition, counsel for PGW made an on-the-record application for a subpoena pursuant to 52 Pa. Code § 5.421 (a)(2), seeking to obtain from PECO Energy Company customer of record information for electric service at 3044 N. Lawrence Street, Philadelphia, PA for the period January 1, 2017, through December 31, 2021. PGW's oral request for the subpoena was granted. The parties were instructed that any late-filed exhibits were due on May 1, 2023, and any written objections to the opposing party's late-filed exhibits were due on May 10, 2023.

The Subpoena requested by PGW was issued on March 30, 2023.

As of the date of this Initial Decision no late-filed exhibits have been submitted by either party.

The record in this matter closed on May 1, 2023, the due date for late exhibits.

FINDINGS OF FACT

1. Complainant is Sandra Lopez, who resides at 3044 N. Lawrence Street, Philadelphia, PA 19133 (Lawrence Street address or Service Address).
2. Respondent is Philadelphia Gas Works.
3. Ms. Lopez resided at 3892 Dungan Street, Philadelphia, PA 19124 from July of 2014 to January of 2017. Tr. 18.
4. Ms. Lopez resided at 3044 N. Lawrence Street, Philadelphia, PA 19133 from November of 2017 to April of 2021. Tr. 19, 38.
5. PGW had no customer of record for the Lawrence Street address from November of 2017 to April of 2021. Tr. 48.
6. Ms. Lopez moved to 1301 Brighton Street, Philadelphia, PA 19111 on May 1, 2021, and resided there until June of 2022. Tr. 20, 33.
7. On May 2, 2021, Ms. Lopez placed gas service in her name at the Brighton Street address. Tr. 38-40, PGW Exhibits 11 and 12.
8. On or around November of 2022, Ms. Lopez returned to the 3044 N. Lawrence Street address. Tr. 20-21.
9. On May 18, 2005, PGW terminated gas service at the Lawrence Street Address by shutting gas off at the curb valve. Tr. 34, 75, PGW Exhibit 4.

10. On December 5, 2017, PGW performed a curb valve safety recheck at the Lawrence Street Address, wherein the technician went to the address and verified that the curb valve was in the same position that PGW left it previously. Tr. 35, PGW Exhibit 5.

11. On March 12, 2020, PGW performed a second curb valve safety recheck at the Lawrence Street address and found the curb valve box obstructed and filled with cement. Tr. 36, PGW Exhibit 6.

12. On January 7, 2022, Dwayne Patrick, a field service technician for PGW, visited the Lawrence Street address on a theft of service check order.

13. While at the Lawrence Street address, Mr. Patrick found gas service was on when it was supposed to be off. Tr. 50, 61-62.

14. Mr. Patrick found that the red caps were missing from the Electronic Reader Transmitter (ERT) head and that foreign screws were used on the PGW meter. PGW Exhibit 1.

15. The use of red caps and proprietary screws are anti-theft measures that PGW incorporates in its meters. Tr. 67.

16. The absence of red caps on the meter ERT and the use of foreign screws are indicative of meter tampering and theft of service. Tr. 52, 54, PGW Exhibits 1 and 2.

17. The absence of red caps and the use of foreign screws on the meter indicate that the plastic ERT head was detached from the metal meter at some point in time. Tr. 67-68.

18. When the ERT head is removed from the meter, the meter ceases to record gas. Tr. 67.

19. Gas bypasses the ERT head and it goes from an inlet to the outlet like a straight pipe. Tr. 67-68.

20. Mr. Patrick locked up the meter at the Lawrence Street address and shut off service at the shut off valve. Tr. 53; PGW Exhibits 1 and 3.

21. Mr. Patrick put two bike locks at the head of service and then put a locking plug in the inlet side of the gas meter set. Tr. 53; PGW Exhibits 1 and 3.

22. While at the Lawrence Street address, Mr. Patrick checked the residence for gas appliances and found that the 140,000 BTU house heater was the only gas appliance there. Tr. 54; PGW Exhibit 3.

23. On January 7, 2022, Mr. Patrick noted that the curb valve box for the Service Address continued to be obstructed and filled with cement. Tr. 73-74, PGW Exhibit 1.

24. On November 21, 2022, Ms. Lopez contacted PGW seeking to turn on gas service at the Lawrence Street address. Tr. 37-38, PGW Exhibits 8 and 9.

25. Upon receiving Ms. Lopez' application for service, PGW ran a credit check which linked Ms. Lopez with the Lawrence Street address as of December 2017. Tr. 37-38, PGW Exhibits 8 and 9.

26. PGW held Ms. Lopez responsible for the gas theft usage that was found at that address. Tr. 38.

27. PGW assessed bypass charges in the amount of \$5,362.32 and rebilled Ms. Lopez for the timeframe of December 6, 2017, through May 1, 2021. Tr. 38-41, PGW Exhibits 11, 12 and 14.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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 and W. Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Pub. Welfare, White Haven Ctr.*, 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*, 461 A.2d 1234 (Pa. 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).

In this case, the Complainant resided at 3892 Dungan Street, Philadelphia PA 19124 from July of 2014 to January of 2017. Tr. 18. Next, Ms. Lopez resided at 3044 N. Lawrence Street, Philadelphia PA 19133 from November of 2017 to April of 2021. Tr. 19, 38. Then, she moved to 1301 Brighton Street, Philadelphia PA 19111 in May of 2021 and resided there until June of 2022. Tr. 20, 33. On or around November of 2022, Ms. Lopez returned to the 3044 N. Lawrence Street Address. Tr. 20-21.

On May 18, 2005, PGW terminated gas service at the Lawrence Street Address by shutting gas off at the curb valve. Tr. 34, 75, PGW Exhibit 4. On December 5, 2017, PGW performed a curb valve safety recheck at the Lawrence Street Address, wherein the technician went to the address and verified that the curb valve was in the same position that PGW left it previously. Tr. 35, PGW Exhibit 5. On March 12, 2020, PGW performed a second curb valve safety recheck at the Lawrence Street address and found the curb valve box obstructed and filled with cement. Tr. 36, PGW Exhibit 6.

On January 7, 2022, Dwayne Patrick, a field service technician for PGW, visited the 3044 N. Lawrence Street address on a theft of service check order. While at the property, Mr. Patrick found gas service was on at the property when it was supposed to be off. Tr. 50, 61-62. In particular, he found that the red caps were missing from the ERT head and foreign screws were used on the PGW meter. PGW Exhibit 1.

Mr. Patrick testified that the use of red caps and proprietary screws are anti-theft measures that PGW incorporates in its meters. Tr. 67. The absence of red caps on the meter ERT and the use of foreign screws are indicative of meter tampering and theft of service. Tr. 52, 54, PGW Exhibits 1 and 2. In particular, Mr. Patrick explained that the absence of red caps and the use of foreign screws on the meter indicate that the plastic ERT head was detached from the metal meter at some point in time. When the ERT head is removed from the meter, the meter ceases to record gas. Gas bypasses the ERT head and it goes from an inlet to the outlet like a straight pipe. Tr. 67-68.

On January 7, 2022, Mr. Patrick locked up the meter at the Lawrence Street address and shut off service at the shut off valve. He put two bike locks at the head of service and then put a locking plug in the inlet side of the gas meter set. Tr. 53; PGW Exhibits 1 and 3. While at the Lawrence Street address, Mr. Patrick also checked the residence for gas appliances and found that the 140,000 BTU house heater was the only gas appliance there. Tr. 54; PGW Exhibit 3. In addition, Mr. Patrick noted that the curb valve box for the Service Address continued to be obstructed and filled with cement. Tr. 73-74, PGW Exhibit 1.

On November 21, 2022, Ms. Lopez contacted PGW seeking to turn on gas service at 3044 North Lawrence Street. Upon receiving Ms. Lopez' application for service, PGW ran a credit check which linked Ms. Lopez with the Lawrence Street address as of December 2017. Tr. 37-38, PGW Exhibits 8 and 9. Ultimately, PGW held Ms. Lopez responsible for the gas theft usage that was found at that address. Tr. 38. PGW's accounting department assessed bypass charges and rebilled Ms. Lopez for the timeframe of December 6, 2017 (i.e., the day after the service was last confirmed off) through May 1, 2021 (Ms. Lopez obtained gas service at the Brighton Street address on May 2, 2021). Tr. 38-40, PGW Exhibits 11 and 12. Based on historical weather data for the timeframe from December 6, 2017, to May 1, 2021, and the BTUs of the house heater (the sole gas appliance found at the Lawrence Street address during Mr. Patrick's January 7, 2022 visit to Lawrence Street address), PGW assessed the Complainant bypass charges in the amount of \$5,362.32 for the period in question. Tr. 40-41; PGW Exhibit 14.

At the hearing, Ms. Lopez did not challenge PGW's findings of meter tampering at the Lawrence Street address. Instead, she challenged only PGW's holding her responsible for the theft of service at the Lawrence Street address. In particular, she claimed that she had gas service in her name at the Lawrence Street address from around December 2017 through April of 2021. Ms. Lopez testified that during this period of time, she received monthly bills from PGW on which she made payments online. Tr. 23. "[A]t first I was going to, like, to cash checking places to pay them. And then once my debit card came in, I was paying it online." Tr. 24. In addition, Ms. Lopez stated that, when she left the Lawrence Street Address, she contacted both

PECO Energy Company and PGW to have her service terminated. She then applied to receive gas service at the Brighton Street Address in May of 2021. Tr. 23.

In response to Ms. Lopez' testimony, Jessica Glace, the manager of the customer review unit for PGW, stated that Respondent has no record of Ms. Lopez having gas service through PGW at the Lawrence Street address during the period November of 2017 to April of 2021. Tr. 32. In addition, Ms. Glace testified that PGW has no record of Ms. Lopez contacting the Respondent for service during that period of time. Tr. 32-33. In fact, Ms. Glace clarified that PGW had no customer of record for the Lawrence Street address from November of 2017 to April of 2021. Tr. 48.

During the hearing, Ms. Lopez requested and was provided an opportunity to submit copies of bank statements or check cashing records to substantiate her claim that she was a paying customer of PGW during the period November 2017 to April 2021. As of the date of this Initial Decision no such documentation has been submitted by Ms. Lopez. Consequently, I find that Ms. Lopez has failed to carry her burden of proving by a preponderance of the evidence that she is not responsible for the theft of service that occurred at the Lawrence Street address during the period December 6, 2017, to May 1, 2021.

Pursuant to the provisions of 52 Pa.Code § 56.191(d),

A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the applicant or customer resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant or customer resided there, not exceeding 4 years prior to the date of requesting that service be restored. The 4-year limit does not apply in instances of fraud and theft.

52 Pa. Code § 56.191(d). According to these provisions, PGW is entitled to require the payment of the Complainant's entire outstanding balance up front as a condition to place service in her name without the 4-year limit and without the payment arrangement requirements imposed by § 56.14 on cases that do not involve theft of service. *See* 52 Pa. Code § 56.191(d).

Based on the foregoing, I conclude that the Complainant was unable to meet her burden of proving that PGW wrongfully assessed theft of service/bypass charges while she was a customer of record for gas service at the Lawrence Street address. PGW is entitled to bill the Complainant for unauthorized usage from December 6, 2017, through May 1, 2021, in the amount of \$5,362.32. Accordingly, Ms. Lopez' Complaint must be dismissed.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 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 public utility may require the payment of any outstanding balance or portion of an outstanding balance if the applicant or customer resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant or customer resided there, not exceeding 4 years prior to the date of requesting that service be restored. The 4-year limit does not apply in instances of fraud and theft. 52 Pa. Code § 56.191(d).

5. The Complainant failed to meet her burden of establishing that the Respondent erred in billing her for unbilled usage at the Lawrence Street address from December 6, 2017, through May 1, 2021, in the amount of \$5,362.32.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Sandra Lopez in Sandra Lopez v. Philadelphia Gas Works at Docket No. F-2023-3037609 is dismissed; and
2. That the record at Docket No. F-2023-3037609 be marked closed.

Date: July 27, 2023

/s/
Eranda Vero
Administrative Law Judge