

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held May 23, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Joan Preston

C-2023-3041161

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Joan Preston (Complainant or Ms. Preston), filed on March 15, 2024, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Arlene Ashton, issued on March 8, 2024. Philadelphia Gas Works (PGW or Company) filed Replies to Exceptions on April 18, 2024.¹ For the reasons

¹ The Complainant's Exceptions did not include a Certificate of Service. The Commission served the Exceptions on PGW on April 8, 2024. By Secretarial Letter dated April 8, 2024, PGW was notified that it had ten days to file Reply Exceptions.

stated below, we will deny the Complainant's Exceptions and adopt the Initial Decision consistent with this Opinion and Order.

I. History of Proceeding

On June 5, 2023, Ms. Preston filed a Formal Complaint (Complaint) with the Commission against PGW. The Complaint alleges that she is not responsible for charges on a bill issued to Ms. Preston by PGW. For relief, the Complainant asked the Commission to order PGW to cease efforts to collect the outstanding balance and from recording this amount with credit bureaus. I.D. at 1.

On June 27, 2023, PGW filed an Answer in response to the Complaint stating that the Complainant has been the owner of the property to which service was provided since June 24, 1984 and denying the material allegations contained in the Complaint. PGW requested that the Commission deny all relief requested in the Complaint and dismiss the Complaint. I.D. at 1-2.

On October 5, 2023, the hearing convened as scheduled. The Complainant appeared on her own behalf and testified. PGW was represented by Graciela Christlieb, Esquire. PGW called one witness, Jessica Glace, a Manager in PGW's Customer Review Unit, and offered two exhibits, identified as PGW Exhibits 1 and 2, that were admitted into evidence. I.D. at 2.

At the hearing, the Complainant indicated that she wished to enter three documents into the record. Ms. Preston identified the documents as "bills" she received from CBE Group dated January 15, 2022, Radius Global Solutions Bay Area dated

May 18, 2023,² and Credit Services dated May 27, 2023. I.D. at 2 (citing Tr. 41-42, 46). Ms. Christlieb indicated that she had reviewed the copy of the Radius Global Solutions Bay Area letter dated May 18, 2023, attached to the Complaint. Ms. Christlieb raised an objection to its entry into the record, contending that it was not relevant. PGW's objection was overruled, and the Radius Global Solutions Bay Area letter dated May 18, 2023, was entered into the record. I.D. at 2 (citing Tr. 43-44).

Ms. Preston was instructed to promptly submit the three proposed exhibits via email to PGW, the court reporter and the ALJ. PGW was given until October 12, 2023, to communicate any objections and Ms. Preston was allowed until October 16, 2023, to respond to any objections raised by PGW. I.D. at 2 (citing Tr. 44-45). The Complainant filed proposed Exhibit 2, the Account Notification on the letterhead of Bay Area Credit Service, on October 5, 2023. PGW filed an objection to the Complainant's late-filed exhibits. The ALJ found that PGW's objections were not filed in accordance with the instructions provided at the hearing and overruled the objections. I.D. at 6. Complainant's Exhibit 2 was admitted into the record via the Initial Decision. I.D. at 2-3.

The record was closed on December 7, 2023, when the transcript for the hearing was filed with the Secretary. The transcript includes the following exhibits:

PGW Exhibit 1 -- Customer Contacts
PGW Exhibit 2 -- Statement of Account
Complainant Exhibit 1 -- Radius Global Solutions LLC letter
dated May 18, 2022
Complainant Exhibit 2 -- Bay Area Credit Service Letter
dated May 27, 2023

I.D. at 3.

² The Radius Global Solutions Bay Area letter dated May 18, 2023, was attached to the Complaint filed by the Complainant. *See*, Complaint form attachment. I.D. at 2, n. 1.

In the Initial Decision issued on March 8, 2024, ALJ Ashton denied and dismissed the Complaint because the Complainant did not meet her burden of proving that PGW violated the Public Utility Code (Code), Commission regulations, or a Commission order. I.D. at 1.

As noted, *supra*, the Complainant filed Exceptions³ on March 15, 2024. PGW filed Replies to Exceptions on April 18, 2024.

II. Discussion

A. Legal Standards

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa. C.S. § 332(a). To establish a legally sufficient case and satisfy the burden of proof, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, a complainant's evidence must be more convincing, by even the smallest amount, than that presented by the respondent

³ We acknowledge that the format of the Complainant's Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that Exceptions be numbered, identify the findings of fact and conclusions of law to which exception is taken, cite to the relevant pages of the Initial Decision, and provide supporting reasons for each Exception. Nevertheless, we retain discretion to liberally construe our procedural rules to secure a just and speedy resolution of a proceeding. Particularly where, as here, the Complainant is appearing *pro se*, and doing so will not affect the substantive rights of the parties, we will treat the Exceptions as having been properly constructed and filed. *See*, 52 Pa. Code § 1.2(d). Therefore, we will treat the Complainant's letter received on March 15, 2024 as properly filed Exceptions.

utility. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a 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 utility. If the evidence presented by the respondent utility is of co-equal value or "weight," the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that of the respondent. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of production 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

B. ALJ's Initial Decision

In her Initial Decision, ALJ Ashton made thirteen Findings of Fact and reached five Conclusions of Law. I.D. at 3-4 and 9-10. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ noted that the Complainant's late-filed Exhibit 2, the Account Notification on the letterhead of Bay Area Credit Service was entered into the record.

The ALJ provided that the Complainant is contesting PGW charges for the period of November 2, 2021 through December 24, 2021. I.D. at 6 (citing Tr. at 13-14). The ALJ stated that the Complainant testified that she contacted PGW by telephone after a tenant moved into the Service Address on November 2, 2021 and again in late December 2021, requesting that PGW remove her name from the gas account for the Service Address and begin providing service in the name of the tenant. I.D. at 6-7 (citing Tr. at 12-13). Additionally, the ALJ noted that the Complainant testified that the property manager for the Service Address had also contacted PGW to request that the gas service be placed in the name of the tenant. I.D. at 7 (citing Tr. at 13-14, 24-25).

The ALJ discussed the Complainant's contention that PGW failed to provide reasonable service to her because she had submitted a copy of the lease signed by the tenant to PGW, demonstrating that the tenant should have been financially responsible for gas service at the Service Address from and after November 2, 2021, not Ms. Preston. I.D. at 7 (citing Tr. at 12-13). The ALJ noted that Ms. Preston claims that PGW erred by failing to provide service in the name of the tenant at the Service Address as Ms. Preston requested. The ALJ noted further that Ms. Preston requested that her credit be "cleared." I.D. at 7 (citing Tr. at 15).

The ALJ provided that Jessica Glace, the manager for PGW's customer review unit, testified that PGW has a policy that, to initiate service to a tenant, the tenant must contact PGW and provide a copy of a lease agreement indicating the start date for the service. I.D. at 7 (citing Tr. at 24-25; PGW Exh. 1). Ms. Glace testified that under PGW's policy, a landlord or prior tenant may not initiate service in the name of a new tenant; only the new tenant may do so. I.D. at 7.

The ALJ stated that Ms. Glace testified that on March 19, 2019, the Complainant contacted PGW to request that service be established in her name at the Service Address. I.D. at 7 (citing Tr. at 18-19; PGW Exh. 1). Ms. Glace confirmed that

PGW provided service to the Complainant from March 19, 2019 until December 24, 2021. I.D. at 7 (citing Tr. at 18-19, 21-22, 32; PGW Exh. 1). Ms. Glace testified further that on December 23, 2021, PGW received an application to initiate service from a party identified as the tenant in the application, which was neither the prior tenant nor Ms. Preston. I.D. at 7 (citing Tr. at 20-21, 26-27; PGW Exh. 1).

Ms. Glace confirmed that on January 5, 2022, the Complainant contacted PGW to notify PGW that the Service Address had been leased as of November 1, 2021. I.D. at 8 (citing Tr. at 22-23; PGW Exh. 1). Ms. Glace also confirmed that on January 6, 2022, the property manager for the Service Address also contacted PGW and requested that the gas service be taken out of the Complainant's name as of November 2, 2021. I.D. at 8 (citing Tr. at 23-24; PGW Exh. 1).

Ms. Glace explained that a PGW representative informed the property manager that in accordance with PGW policy, the new tenant must contact PGW to request gas service and provide a copy of a lease agreement indicating the start date for the service to the tenant. I.D. at 8 (citing Tr. at 24-25; PGW Exh. 1).

The ALJ opined that the Complainant's argument rests on the belief that a landlord should have the ability to direct PGW to transfer responsibility for gas service to a tenant without the tenant's participation based solely upon presentation of a signed lease. The ALJ reasoned that the Complainant's argument appears to be based solely on her belief that PGW's policy is unreasonable or flawed. I.D. at 8.

The ALJ explained that PGW's policy reflects an unwillingness to transfer service and the attendant financial obligation for gas service to an individual without the express consent of that person. The ALJ concluded the "policy seems reasonable on its face." I.D. at 8-9. The ALJ provided that testimony and documentary evidence submitted by PGW demonstrate that a new tenant did not request that gas service at the

Service Address be placed in their name until December 23, 2021. I.D. at 9 (citing Tr. at 22; PGW Exh. 1). The ALJ determined that Ms. Preston did not present any testimony or evidence to demonstrate that PGW did not follow its account transfer policy in this case, or that it did so in an unreasonable manner. I.D. at 9.

The ALJ dismissed the Complaint, finding that the Complainant failed to meet her burden of proving that PGW violated the Code, Commission Regulations or a Commission Order. *Id.*

C. Exceptions

In her Exceptions, the Complainant contends that both she and Hartsville Property Management contacted PGW during the time period of November 2021 through June 2023 regarding the charges PGW assigned to her and reported to credit bureaus as uncollected. The Complainant avers that she provided PGW with a copy of the lease agreement signed by the tenant. The Complainant submits that she has a copy of a December 7, 2021 bill from the Property Manager that was sent to the tenant detailing the tenant's responsibility for the bill. Finally, the Complainant states that "[t]his is not the first time I experienced this accusation with PGW." Exc. at 1.

D. Replies

In response to each of the Complainant's Exceptions, PGW stated: "This Exception does not negate any of the Findings of Fact or Conclusions of Law reached by the Presiding Officer in this case." R. Exc. at 2-3.

PGW also provided the following information in the Conclusion section of their Reply Exceptions:

The evidence provided by PGW shows that the Complainant contacted PGW to place the gas service at the Service Address in her name. Neither PGW's nor the Complainant's evidence indicate that the Complainant contacted PGW to take the gas service at the Service Address out of her name. PGW's evidence further shows that, when someone called PGW to establish gas service at the Service Address in their name, the gas service was taken out of the name of the Complainant and put in the name of the new customer. The fact that the Complainant feels that this individual should be responsible for gas service provided for a period of time before they contacted PGW for gas service is a private matter between her and that individual. PGW informed the Complainant that she could have the customer contact PGW to correct the start date for the gas service. (PGW Exhibit 1, page 3).

The customer did not contact PGW to change their gas service start date. PGW also explained to Complainant's property manager that in order to not be held responsible for the gas service provided for the period of time she is disputing, the Complainant would have had to call PGW to take the gas service out of her name, which she did not do. (PGW Exhibit 1, pages 5-6).

The Complainant has not identified any error in law or fact that would support a reversal of Judge Ashton's finding that she failed to carry her burden of proving that PGW violated any provision of the Public Utility Code or any Commission rule, regulation, or Order. It is not PGW's responsibility to intervene in private cont[r]acts between landlords and tenants, nor is PGW a tool to be used by landlords to somehow force tenants or other individuals to comply with the provisions of private contracts.

PGW R. Exc. at 3-4.

E. Disposition

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Based upon our review of the record, we conclude that the Complainant has failed to meet her burden of proof that PGW violated the Code, Commission Regulations or a Commission Order.

PGW testified that service was placed in Ms. Preston's name on March 19, 2019. PGW Exh 1 at 1 (Tr. at 18). PGW Exh. 1 at 1 is a customer contact record that also states that the Customer of Record (COR) wanted to set up auto revert into her name when a tenant moves out. The customer contact record also states that the auto revert was set up and the customer was satisfied. PGW Exh. 1 at 1.

PGW Exh. 1 at 2 is a customer contact record dated December 23, 2021 indicating that a tenant contacted PGW online to begin service.⁴

PGW testified that Ms. Preston did not contact PGW between March 19, 2019 and December 24, 2021 to have service taken out of her name. Tr. at 36-37.

⁴ There are no additional customer contact records in PGW Exhibit 1 from PGW for the intervening period from March 2019 to December 23, 2021.

PGW Exh. 1 at 3, is a customer contact record dated January 5, 2022, that stated that the Property Manager was told that the customer can forward the bill to the tenant or have the tenant contact PGW to correct the turn on date back to November 1, 2021. PGW Exh. 1 at 3.

The record shows that the tenant, who had a lease beginning November 1, 2021, did not contact PGW to begin service in their name. The Complainant had auto revert on the account so that when a tenant moved out the account reverted back to her name. PGW testified that it cannot use a lease to start billing a person for gas service without that person's permission. Tr. at 25-26. To change the account billing responsibility to the tenant, the tenant would have to contact PGW. Tr. at 25. The subject of this proceeding – the charges from November and December 2021 – were correctly attributed to the Complainant. The Complainant has failed to show that PGW has violated the Code, Commission Regulations or a Commission Order. Accordingly, the Complainant's Exceptions are denied.

III. Conclusion

Based upon our review of the record and the applicable law, we shall deny, the Exceptions of Ms. Preston, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

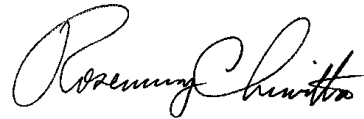
1. That the Exceptions of Ms. Joan Preston, filed on March 15, 2024, to the Initial Decision of Administrative Law Judge Arlene Ashton, issued on March 8, 2024, at Docket No. C-2023-3041161, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Arlene Ashton, issued on March 8, 2014, at this docket, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Joan Preston against Philadelphia Gas Works at Docket No. C-2023-3041161 is denied.

4. That the proceeding at Docket No. C-2023-3041161 be marked closed.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: May 23, 2024

ORDER ENTERED: May 23, 2024