

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Medina Gonzalez	:	
	:	
v.	:	F-2023-3042230
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complainant challenges PGW transferring the outstanding balance for the service address to his account. This Decision grants the Complaint in part and denies it in part. The Complainant is responsible for the portion of the outstanding balance that accrued when he lived at the service address.

HISTORY OF THE PROCEEDING

On August 8, 2023, Joseph Medina Gonzalez (Complainant or Mr. Medina Gonzalez) filed a Formal Complaint against Philadelphia Gas Works (Respondent or PGW). In the Complaint, Mr. Medina Gonzalez contends that there are incorrect charges on his PGW bill. Specifically, he asserts that PGW is holding him responsible for gas bills issued when he did not live at the service address on Comly Street in Philadelphia, PA. The Complaint is a timely appeal of a decision of the Bureau of Consumer Services (BCS), Case Number 3906116, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

PGW filed an Answer on September 9, 2023. In the Answer, PGW asserts that the Complainant contacted PGW to open an account on April 28, 2023, that he is linked to the service address since March of 2020, and that his ID links him to the service address since July 2021.

An Initial Call-In Telephone Hearing Notice dated September 12, 2023, was issued and advised the parties that an initial hearing was scheduled for November 2, 2023, at 10:00 a.m. A Prehearing Order was issued on October 10, 2023, reminding the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The hearing convened as scheduled on November 2, 2023. Counsel for PGW, Graciela Christlieb, Esquire, was present. When the hearing began, Mr. Medina Gonzalez was not present but during the hearing, but called the Commission and stated that he would be unable to appear because of a family emergency. The hearing was continued, to be rescheduled.

On November 2, 2023, a Further Call-In Telephone Hearing Notice was issued, setting a hearing for December 14, 2023. A Prehearing Order was issued on November 7, 2023.

The hearing convened as scheduled on December 14, 2023. Attorney Christlieb appeared on behalf of PGW. Mr. Medina Gonzalez did not appear. Attorney Christlieb moved that the matter be dismissed for failure to prosecute. No decision on the motion was made at the hearing.

On December 18, 2024, Mr. Medina Gonzalez emailed the Commission and requested that the hearing be rescheduled. In the email, he stated that he confused the “date that I had today with the hearing from last week.”

On December 26, 2023, a Further Call-In Telephone Hearing Notice was issued, setting a hearing for February 6, 2024. A Prehearing Order was issued on December 27, 2023.

Due to a death in the family of the presiding officer, the February 6, 2024 hearing was rescheduled. On February 5, 2024, a Hearing Cancellation and Rescheduling Notice was issued, setting the hearing for February 13, 2024.

The hearing began as scheduled on February 13, 2024. Mr. Medina appeared *pro se* and presented five exhibits. PGW was represented by Ms. Christlieb. Ms. Christlieb presented PGW Customer Review Officer Jessica Antonetti as a witness and introduced 17 exhibits.

All exhibits were admitted into the record. The record in this matter closed on March 7, 2024, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Jose Medina Gonzalez.
2. The Respondent is Philadelphia Gas Works.
3. The service address at issue, as stated in PGW records, is 4906 Comly Street, Apartment 1F, Philadelphia, PA 19135. Tr. 19, 37
4. Mr. Medina Gonzalez designated the address as 5929 Keystone Street, Unit 4906, Apartment A, Philadelphia, Pennsylvania. Tr. 19.
5. A lease signed by the Complainant shows the address as 4906 Comly Street, Apartment A. Complainant Exhibit 1.
6. All addresses pertain to the service address location, 4906 Comly Street, Apartment 1F.
7. On October 18, 2021, the Complainant called PGW to report a gas leak at the service address. Tr. 46; PGW Exhibit 10.

8. On April 4, 2022, the service address customer of record at that time, along with the Complainant, called PGW regarding a payment error. PGW Exhibit 11; Tr. 47.

9. On January 9, 2023, the customer of record at 4906 Comly Street, Unit 1F, contacted PGW and requested that service in the customer's name be discontinued. Tr. 38-39; PGW Exhibit 1.

10. Mr. Medina Gonzalez paid rent for 1401 E. Bristol Street Philadelphia, Pennsylvania for the period December 21, 2022 – April 20, 2023. Complainant Exhibits 2A-2D.

11. On April 21, 2023 and April 28, 2023, PGW determined that gas was being used at the service address and left 72-Hour Notices at the property. Tr. 39-40; PGW Exhibits 2, 3.

12. Mr. Medina Gonzalez called PGW to establish service at the service address on April 28, 2023. Tr. 40; PGW Exhibit 4.

13. After PGW performed an ID check, the Company determined that the Complainant must provide two forms of ID and place a deposit to have service established in his name. Tr. 40-41; PGW Exhibit 4.

14. The Complainant signed a lease for the service address beginning May 1, 2023. Tr. 21.

15. On May 1, 2023, Mr. Medina Gonzalez again called PGW to establish service, at which time he was informed that he needed two forms of ID. PGW Exhibit 5; Tr. 41.

16. Mr. Medina Gonzalez provided an ID card and a lease to PGW and PGW established service for Mr. Gonzalez on May 2, 2023. Tr. 41-42; PGW Exhibit 6.

17. PGW linked the Complainant to the service address as of March 2020 through Experian and as of July 21, 2021 with his driver's license. Tr. 42, 45-46; PGW Exhibit 9.

18. On May 30, 2023, PGW transferred \$1,149.99 to the Complainant. PGW Exhibit 13.

19. The amount transferred to the Complainant on May 30, 2023 was the outstanding balance for the service address for charges since July 2, 2021. Tr. 49, PGW Exhibit 13.

20. The Complainant acknowledges that he has a balance due to PGW. Tr. 23.

21. The Complainant did not live at the service address from December 21, 2022 thru April 20, 2023, the period that the Complainant rented a place on Bristol Street. Tr. 21-22, 23, 54, 71; PGW Exhibit 1; Complainant Exhibits 2A-D.

DISCUSSION

Any offense alleged by the Complainant must be a violation of the Public Utility Code (Code), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof. 66 Pa.C.S. § 332(a).

In *Waldron v. Philadelphia Electric Company*, 54 Pa.P.U.C. 98 (1980) 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. § 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. West Penn Power Co.*, 1994 Pa.P.U.C. LEXIS 95 (1994). 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). 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).

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).

Regarding transfer and payment of an outstanding balance, Commission regulations at 52 Pa. Code § 56.35 provide, in pertinent part:

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

(b) A public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant, except as provided for in paragraphs (1) and (2).

(1) A public utility may require the payment of an outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there, not exceeding 4 years from the date of the service request. The 4-year limit does not apply if the balance includes amounts that the public utility was not aware of because of fraud or theft on the part of the applicant.

(2) A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in this paragraph, used to determine the applicant's liability for any outstanding balance.

(3) Any outstanding residential account with the public utility may be amortized in accordance with § 56.191 (relating to payment and timing).

52 Pa. Code § 56.35(a), (b).

Mr. Medina Gonzalez contests PGW transferring an outstanding balance from the service address to his account. He specifically challenges the transfer of charges that were incurred from January 2023 until April 2023.

The service address is 4906 Comly Street, Unit 1F. FOF 3,6. On January 9, 2023, the customer of record for the service address at that time contacted PGW and asked that the gas service be taken out of his name. PGW removed that customer's name from the account. Tr. 38-39; PGW Exhibit 1.

On April 28, 2023, Mr. Gonzalez contacted PGW to have gas service to the service address placed in his name. Tr. 40; PGW Exhibit 4. After background and credit checks, PGW asked for additional identification and a deposit. Tr. 40-41; PGW Exhibit 4. PGW established

service for the Complainant at the service address on May 2, 2023. Tr. 41-42; PGW Exhibit 6. On May 30, 2023, PGW transferred the service address outstanding balance of \$1,149.99 to the Complainant's account. PGW Exhibit 13.

The outstanding bill transferred to the Complainant includes charges starting on July 2, 2021. Tr. 49, PGW Exhibit 13. PGW contends that the Complainant is responsible for the entire outstanding balance because its Experian credit check showed that the Complainant is associated with the address since March of 2020 and the Complainant's driver's license connects him to the service address since July 21, 2021 Tr. 42, 45-46; PGW Exhibit 9.

Mr. Medina Gonzalez is not responsible for the entire transferred amount. He credibly testified that he did not live at the service address beginning in January of 2023 until April of 2023. Tr. 21-23, 54, 71. Receipts show that Mr. Medina Gonzalez rented a room or living space on Bristol Street from December 21, 2022 to April 20, 2023. Complainant Exhibits 2A-2D. This evidence supports a finding that the Complainant did not live at the service address from December 21, 2022 to April 20, 2023.

Mr. Gonzalez is responsible for the remaining amount transferred, however. The amount transferred to the Complainant's account is for usage beginning July 2, 2021. Business records presented by PGW support a finding that the Complainant lived at the service address in 2021 and 2022 with the PGW customer of record at that time.

PGW records show that on October 18, 2021, the Complainant called PGW to report a gas leak at the service address. Tr. 46; PGW Exhibit 10. The records also show that on April 4, 2022, the service address customer of record at that time and the Complainant called PGW regarding a payment error. PGW Exhibit 11; Tr. 47. Mr. Medina Gonzalez did not contest that he lived at the service address during these periods. Also, through a credit check, PGW linked the Complainant to the service address as of March 2020 through Experian and as of July 21, 2021 with his driver's license. Tr. 42, 45-46; PGW Exhibit 9.

Therefore, in accordance with 52 Pa. Code § 56.35(a), the Complainant is legally responsible and properly billed for any outstanding balance for the service address beginning July 2, 2021, excluding December 21, 2022 thru April 20, 2023, the period when Mr. Gonzalez lived on Bristol Street. The Complainant’s responsibility for gas service includes April 21-30, 2023 because evidence supports a finding that the Complainant lived at the service address and used gas there during that time. Rent receipts show that the Complainant paid for rent on Bristol Street only thru April 20, 2023 and PGW found that gas was being used at the service address and left 72-hour notices on April 21 and 28, 2023. Also on April 28, 2023, Mr. Gonzalez called PGW to establish service in his name at the service address. Tr. 40; PGW Exhibit 4.¹

Under 52 Pa. Code § 56.35(a), PGW “may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission.” An Experian check and the Complainant’s ID associated him with the property during the period in question. Although PGW in error transferred the entire outstanding amount to the Complainant, PGW committed no violation per se, and therefore no penalty will be considered.

Section 56.35(b)(3) provides that any outstanding residential account with the public utility may be amortized. PGW will be directed to meet with the Complainant to discuss amortization of the outstanding amount in accordance with that section.²

CONCLUSIONS OF LAW

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

¹ The testimony of Mr. Gonzales suggested that when he previously lived at the service address, he believed that someone else was responsible for paying for the gas service. Tr. 53-54. Mr. Gonzalez would have to pursue any claims of reimbursement in a civil court. *George W. Kopf, Jr. v. PECO Energy Company*, Docket No. C-2012-2332993 (Opinion and Order entered June 13, 2013)

² This will allow the Complainant to discuss options for paying the amount due in increments over time rather than the entire amount becoming due immediately.

2. The Complainant had the burden of proof. 66 Pa.C.S. § 332(a).

3. A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa. Code § 56.35.

4. Complainant is responsible to pay for the residential service provided to the service address when the Complainant lived there. 52 Pa. Code § 56.35.

5. The outstanding amount may be amortized in accordance with 52 Pa. Code 56.35(b)(3) and § 56.191.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Jose Medina Gonzalez against Philadelphia Gas Works at Docket No. F-2023-3042230 is denied in part and granted in part.

2. That the Formal Complaint filed by Jose Medina Gonzalez against Philadelphia Gas Works at Docket No. F-2023-3042230 is granted in part and the Complainant is not responsible for PGW charges at the service address incurred December 21, 2022 thru April 20, 2023.

3. That within 30 days of the final order in this matter, Philadelphia Gas Works remove from the account of Jose Medina Gonzalez any charges incurred during the period December 21, 2022 through April 20, 2023.

