

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Beverly Graham	:	
	:	
v.	:	F-2023-3043482
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complaint of Beverly Graham because she failed to meet her burden of proving that Philadelphia Gas Works is incorrectly holding her responsible for \$6,597.28 in unauthorized usage charges that accrued at the service address between March 9, 2020, and June 16, 2023.

HISTORY OF THE PROCEEDING

On September 25, 2023, Beverly Graham (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “[i]ncorrect charges are on my bill,” and “[o]ther,” next to which she alleged that PGW put

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3921534, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

a bill in her name of which she was not aware. As relief, the Complainant requested that PGW not charge her for unknown fees or bills, and for PGW to give the bill to the correct person, her brother, Marlow Tate. The Complainant disputed being responsible for this bill simply because she put her mother's house in her name.

On November 1, 2023, the Respondent filed an Answer admitting that it terminated the gas service at 2408 N. Chadwick Street, Philadelphia (service address) and denying that there are incorrect charges on the bill for gas service at the service address. The Respondent averred that PGW terminated gas service to the service address in 2005. The Respondent further averred that PGW visited the service address on June 16, 2023 and found the gas on as well as evidence of theft of service. PGW then terminated the service again, and subsequently billed the Complainant for the bypass charges based on historical use at the property.

By Initial Telephonic Hearing Notice dated November 6, 2023, an initial call-in telephonic hearing was scheduled for January 3, 2024 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on November 13, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

On December 13, 2023, Graciela Christlieb, Esq., Counsel for the Respondent, filed Philadelphia Gas Works' Motion to Continue (Motion). In the Motion, Ms. Christlieb indicated that she is unavailable to appear on the scheduled day of the hearing due to an obligation in the US Bankruptcy Court for the Eastern District of Pennsylvania. Ms. Christlieb further indicated that PGW had spoken with the Complainant, Beverly Graham, to discuss PGW's request for a continuance in this matter, and that Ms. Graham stated that she has no objection to PGW's request for continuance.

By Interim Order dated December 14, 2023, I granted the Respondent's Motion for Continuance.

By Call-In Telephone Cancellation/Reschedule Hearing Notice dated January 9, 2024, the Initial Call-In Telephonic Hearing was rescheduled for February 20, 2024 at 10:00 a.m.

The hearing convened as scheduled on February 20, 2024. The Complainant appeared *pro se* and testified. The Respondent appeared and was represented by Ms. Christlieb, who presented the testimony of Albert Teti, a PGW General Supervisor of Revenue Protection and Field Service, and Patricia Bernard, a PGW Customer Review Officer. The Respondent submitted ten exhibits, all of which were admitted into the record.

The record closed on March 12, 2024, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Beverly Graham.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant lives at 8566 Temple Road, Philadelphia, PA 19150 (Temple Road Address). Tr. 16.
4. The Complainant is a PGW customer at the Temple Road address. Tr. 17.
5. The Complainant's Complaint concerns service to 2408 N. Chadwick Street, Philadelphia, PA 19132 (service address). Tr. 17.
6. On September 12, 2006, PGW completed a safety check at the service address. Tr. 44; PGW Exh. 1.

7. During the safety check, PGW discovered theft of service via a flex connector in the inlet to outlet. Tr. 44; PGW Exh. 1.
8. PGW also found the gas meter on the floor during the September 12, 2006 safety check. Tr. 44; PGW Exh. 1.
9. PGW left the gas off after the safety check. Tr. 44-45; PGW Exh. 1.
10. The most recent customer of record for the service address at the time PGW discovered theft of service was Marlow Tate, the Complainant's brother. Tr. 31, 45.
11. Marlow Tate had gas service in his name from May 19, 2002, to November 14, 2005. Tr. 45.
12. There have not been any PGW customers of record at the service address since Marlow Tate. Tr. 45.
13. On March 16, 2018, PGW conducted a curb valve safety recheck at the service address. Tr. 46; PGW Exh. 2.
14. During a curb valve safety recheck, PGW technicians verify that the gas service is still off at the curb valve. Tr. 47.
15. During the March 16, 2018 curb valve safety check, PGW found the gas was off and left the gas off. Tr. 47.
16. The Complainant has been the owner of the service address since March 9, 2020. Tr. 17, 19, 73; PGW Exh. 9.

17. The Complainant acquired the service address from her mother, who was the previous owner. Tr. 73; PGW Exh. 9.

18. The Complainant is not a PGW customer at the service address. Tr. 23.

19. After becoming the owner of the service address, the Complainant stopped by the service address several times while renovation work was taking place. Tr. 24, 30.

20. On November 22, 2021, the Complainant contacted PGW to inquire about getting gas service in her mother's name. Tr. 66-67.

21. At that time, PGW advised the Complainant that her mother would have to pay \$1,837.03 for the previously discovered unauthorized usage from 2006, a reconnection fee of \$123.23, and a \$190 security deposit, for a total payment of \$2,150.26. Tr. 66.

22. On June 12, 2023, the Complainant contacted PGW seeking to place gas service in her name. Tr. 38, 48; PGW Exh. 3.

23. On June 16, 2023, a PGW technician went to the service address for the purposes of installing a meter and turning on the gas service. Tr. 48; PGW Exh. 3.

24. The Complainant was on site at the service address during the PGW technician's June 16, 2023 visit. Tr. 25-26.

25. The PGW technician found that the gas was on when it was supposed to be off. Tr. 48-49; PGW Exh. 5.

26. The PGW technician found a flex connector bypass which was used to connect the head of service to the main gas line. Tr. 49-50, 53; PGW Exh. 5.

27. Gas appliances at the service address include an operational house heater and an operational automatic gas range on the gas line. Tr. 29, 50, 53; PGW Exhs. 4, 5.

28. The PGW technician left the gas off at the curb box with an expander. Tr. 51, 53, 71; PGW Exh. 4.

29. An expander is a security mechanism placed in the curb box to try to prevent future thefts. Tr. 51.

30. There hasn't been a gas meter at the service address since 2006. Tr. 53; PGW Exh. 4.

31. PGW determined the period of unauthorized usage to be from March 16, 2018, the date of the curb valve check when the gas was found off, and June 16, 2023, the date the gas was found back on. Tr. 70.

32. PGW calculated the bill for unauthorized usage to be \$10,142.45. Tr. 72; PGW Exh. 7.

33. PGW calculated the bill for unauthorized usage based on historic usage at the property. Tr. 71.

34. Since the Complainant has only been the owner of the service address since March 9, 2020, PGW re-calculated the bill for unauthorized usage for the period from March 9, 2020 through June 16, 2023. Tr. 73; PGW Exh. 10.

35. The recalculated bill for unauthorized usage from March 9, 2020 through June 16, 2023 to be \$6,597.28. Tr. 74; PGW Exh. 10.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 332(a).

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. *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). 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 (Pa. Cmwlth. 1990). A preponderance of the evidence is evidence more convincing, by even the smallest amount, than that presented by the other party. *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 & W. Ry. Co. 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 her 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).

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. Cmwlt. 2001).

In the present case, the Complainant challenged her responsibility for unauthorized usage charges at the service address between March 9, 2020, the date she became the owner of the service address, and June 16, 2023, the date that PGW discovered the unauthorized usage. The Complainant believes that her brother, the last customer of record at the service address, should be held responsible for the unauthorized usage. Tr. 31. However, 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. *Simmons v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018).

The Complainant, as the owner of the service address since March 9, 2020, had dominion and control over the property at all times relevant to this case.² The Complainant was responsible for ensuring that theft of PGW's service did not occur at the service address. Although PGW has not directly accused the Complainant of engaging in theft of service, her failure to secure PGW's service leaves her responsible for the unauthorized usage charges that accrued between the date she became the owner and the date that the unauthorized usage was discovered.

The Complainant was not able to demonstrate that PGW is incorrectly holding her responsible for the unauthorized usage charges that accrued at the service address between March 9, 2020 and June 16, 2023. Since the Complainant was unable to meet her burden in this matter, her Complaint is denied.

² The Complainant testified that after becoming the owner of the service address, she stopped by the service address several times while she was renovating the property. Tr. 24, 30.

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 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. *Simmons v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Order entered July 12, 2018).

5. The Complainant failed to meet her burden of demonstrating that PGW is incorrectly holding her responsible for \$6,597.28 in unauthorized usage charges that accrued at the service address between March 9, 2020 and June 16, 2023. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Beverly Graham at Beverly Graham v. Philadelphia Gas Works at Docket No. F-2023-3043482 is denied;

2. That the Formal Complaint at Docket No. F-2023-3043482 be marked closed.

Date: June 7, 2024

_____/s/_____
Christopher P. Pell
Deputy Chief Administrative Law Judge