

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yun Ren	:	
	:	
v.	:	F-2024-3045420
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Formal Complaint in part and denies it in part. The Complainant landlord is not responsible for the entire outstanding balance.

HISTORY OF THE PROCEEDING

On January 8, 2024, Yun Ren (Ms. Ren or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW). Ms. Ren checked the boxes on the Formal Complaint form indicating that there were incorrect charges on her bill and that the utility had shut off or was threatening to shut off her service. She contends that she should not have to pay the entire bill of a tenant who lived at her property from January 2020 to January 2023 and moved out. This is an appeal of an adverse decision of the Commission’s Bureau of Consumer Services (BCS), Case Number 3959080.¹

¹ A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

PGW filed an Answer on February 1, 2024. PGW denied that there were incorrect charges on the Complainant's bill and stated that gas was terminated for nonpayment. The Company also stated that on November 20, 2023, someone identifying themselves as the landlord/owner called to have service restored and that the landlord/owner was linked to the property since 2009 through an Experian credit check. PGW also averred that a PGW technician found evidence of unauthorized gas usage.

An Initial Call-In Telephonic Hearing Notice was issued on February 7, 2024, setting a telephonic hearing April 4, 2024.

A Prehearing Order was issued on February 23, 2024. The Prehearing Order advised the parties of the hearing procedures, and that the Complainant has the burden of proof.

The hearing began as scheduled on April 4, 2024. Ms. Ren represented herself and presented 1 exhibit.

PGW was represented by Graciela Christlieb, Esquire. On behalf of PGW, Attorney Christlieb presented six exhibits and the testimony of Wendy Vacca, PGW Senior Customer Review Officer, and Jason Holder, PGW Field Service Technician.

All exhibits presented at the hearing were admitted into the record.

Following the hearing, PGW submitted two additional exhibits and the Complainant submitted two additional exhibits. All will be admitted into the record pursuant to the ordering paragraphs below.

The exhibits in this matter are:

Ren Exhibit 1 (Zillow Listing)
Ren Exhibit 2 (Video Service address yard)
Ren Exhibit 3 (Invoice)

- PGW Exhibit 1 (Staff Reporting Sheet)
- PGW Exhibit 2 (Screenshots from AIMS)
- PGW Exhibit 3 (Customer Contact Shutoff)
- PGW Exhibit 4 (Screenshots from AIMS)
- PGW Exhibit 5 (Turn-On Contact Form)
- PGW Exhibit 6 (Gas Theft Calculation)
- PGW Exhibit 7 (Investigation Customer Contact Records)
- PGW Exhibit 8 (Meter Photo)

The record closed on April 30, 2024 upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Ms. Yun Ren.
2. The Respondent is Philadelphia Gas Works,
3. The Complainant's husband is the owner of and the Complainant manages and acts as landlord of 6323 Torresdale Avenue, Philadelphia, PA 19135 (service address). Tr. 9.
4. PGW provides residential gas to the service address. Tr. 9-10.
5. A tenant moved into the service address in January of 2019. Tr. 21
6. Service was shut off for nonpayment on May 15, 2019. Tr. 24; PGW Exhibit 3.
7. On January 29, 2020, PGW conducted a valve check at the service address and found the gas valve off, showing that the gas remained off at the property. Tr. 27; PGW Exhibit 4.
8. On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency that identified the COVID-19 pandemic as a disaster emergency affecting the entire Commonwealth.

9. On March 13, 2020, the Commission issued an Emergency Order that, *inter alia*, established a prohibition on the termination of public utility service (Termination Moratorium). *Public Utility Service Termination Moratorium -- Proclamation of Disaster Emergency -- COVID-19*, Docket No. M-2020-3019244 (Order entered Mar. 13, 2020).

10. On October 13, 2020, the Commission entered an Order modifying the Termination Moratorium, to remain in effect "until the earlier of: (1) March 31, 2021; (2) the date on which the Governor's Proclamation of Disaster Emergency is rescinded; or (3) a time otherwise established by the Commission." *See Public Utility Service Termination Moratorium - - Modification of March 13th Emergency Order*, Docket No. M-2020-3019244 (Order entered Oct. 13, 2020).

11. On March 11, 2021, the Commission approved a Motion lifting the COVID-19 Termination Moratorium and permitting service terminations effective April 1, 2021. *See Public Utility Service Termination Moratorium -- Motion of Chairman Gladys Brown Dutrieuille*, Docket No. M-2020-3019244 (Public Meeting Mar. 11, 2021).

12. The Complainant could not evict the tenant from or have the utility services turned off for the service address during periods of the COVID-19 moratoriums. Tr. 10-11.

13. The tenant moved out of the service address in January of 2023. Tr. 11.

14. The Complainant began renovating the property in March of 2023. Tr. 20.

15. When the Complainant contacted PGW in November of 2023 to open an account at the service address, PGW conducted a credit check, which linked the Complainant to the service address since May of 2009. Tr. 10, 18, 38; PGW Exhibit 5.

16. When a PGW technician went to the service address to turn on service on November 27, 2023, the technician found the gas on. Tr. 29-30; PGW Exhibits 1, 2.

17. PGW determined there was theft of service and required the Complainant to pay \$10,822.15 for the unauthorized usage prior to restoration of gas service. Tr. 32, 45-47; PGW Exhibit 1, 2, 5, 6.

18. The Complainant paid the outstanding amount to PGW, and service was restored on February 28, 2024. Tr.18, 31; PGW Exhibit 5.

DISCUSSION

The Pennsylvania Public Utility Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The statutory definition of “service” is to be broadly construed. *Kim Betchy v. W. Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities,

and the public, as well as the interchange of facilities between two or more of them

66 Pa.C.S. § 102.

As the proponent of a rule or order, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must demonstrate by a preponderance of the evidence that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission.

66 Pa.C.S. § 701.

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. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980). A trace of evidence or a suspicion of the existence of a fact is insufficient. *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961).

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 to the evidence presented by the Complainant, the Complainant has not satisfied his burden of proof. The Complainant would then 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).

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. 66 Pa.C.S. § 316; *Kossman v. Pa. Pub. Util. Comm'n*, 694 A.2d 1147 (Pa. Cmwlth. 1997); *Stiteler v. Bell Tel. Co. of Pa.*, 379 A.2d 339 (Pa. Cmwlth. 1977). Under the Philadelphia Gas Works Gas Service Tariff PA. P.U.C. No. 2 at § 8.3:

In 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.

Additionally, a utility may require the payment of an outstanding balance as a condition of restoring service. 52 Pa. Code § 56.191. Where there is unauthorized use of service, 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. *See Simmons v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Opinion and Order entered July 12, 2018) (*Simmons*).

Ms. Ren contends that PGW should not hold her responsible for theft of service and require her to pay the entire balance not paid by the tenant. She testified that she could not evict the tenant because of COVID-19 and that the tenant did not pay rent and did not leave the property until January of 2023. Tr. 10-11. After the tenant moved out, Ms. Ren began to remodel the property and in July of 2023 put the property up for rent. In October, it began to get cold, and the Complainant contacted PGW to start gas service. When she called PGW, she was told that gas at the property was stolen. Tr. 11. Ms. Ren questions why she had to pay the tenant's gas bill when PGW knew that the tenant was not paying the bill and did not shut the gas off. Tr. 12.

PGW determined that there was theft of service at the service address and required the Complainant, as owner, to pay the outstanding bill as a condition of turning the gas on at the service address. Tr. 13,31, 41-44; PGW Exhibits 1,2,7. PGW last found the gas off on January 29, 2020. When a PGW technician visited the service address on November 27, 2023 to turn on service in the Complainant's name, the gas was found on. PGW Exhibit 4. PGW calculated that gas was stolen from January 30, 2020 through November 27, 2023. Tr. 30; PGW Exhibit 6. The total amount sought by PGW for the unauthorized usage, based on appliances at the service address and historical usage, was \$10,822.15. Tr. 45-47; PGW Exhibits 1, 2, 6.

Under PGW Tariff § 8.3 and 52 Pa. Code § 56.191, PGW could require payment for unauthorized usage as a condition of restoring the service. The Complainant is not responsible for the entire balance but is responsible for usage during the periods that she, as owner, had dominion and control over the service address.

During the time of the COVID-19 emergency, the Complainant did not have dominion and control over the service address, particularly following the Pennsylvania Governor's March 6, 2020 Proclamation of Disaster Emergency and the March 13, 2020 Commission Emergency Order prohibiting termination of public utility service until the April 1, 2021 termination of the moratorium. *See Public Utility Service Termination Moratorium -- Motion of Chairman Gladys Brown Dutrieuille*, Docket No. M-2020-3019244 (Public Meeting Mar. 11, 2021).² Ms. Ren is not responsible for usage charges during the moratorium period of March 6, 2020 through April 1, 2021. However, as landlord/owner, the Complainant is responsible to have known, or should have known, of tampering and theft of service occurring at the property during the other periods of unauthorized gas usage at the service address and was therefore responsible for payment of the remaining outstanding amount prior to restoration of service. *Simmons*.

² It is noteworthy that, although overturned by the United States Supreme Court, there was a COVID -19 related Centers for Disease Control moratorium on evictions during the period of usage at issue in this matter. *See Ala. Ass'n of Realtors v. HHS*, 141 S. Ct. 2485, 594 U.S. 758 (2021).

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. Where there is unauthorized use of service or meter tampering, a customer must pay the amount that PGW may estimate is due for service used even if such usage is not registered on the Company's meter. Philadelphia Gas Works Gas Service Tariff PA. P.U.C. No. 2 at § 8.3.
5. PGW may require the payment of an outstanding balance as a condition of restoring service. 52 Pa. Code § 56.191
6. 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 (Opinion and Order entered July 12, 2018).

ORDER

THEREFORE

IT IS ORDERED

1. That Ren Exhibits 2 and 3 and PGW Exhibits 7 and 8 are admitted into the record.
2. That the Formal Complaint filed by Yun Ren in Yun Ren v Philadelphia Gas Works, Docket No. F-2023-3045420, is granted in part and denied in part.
3. That Philadelphia Gas Works issue a refund to the Complainant for charges for the period March 6, 2020 through April 1, 2021.
4. That the Complainant, Yun Ren, is responsible for the remaining charges.
5. That the docket at F-2023-3045420 be marked closed.

Date: July 29, 2024

_____/s/
Darlene D. Heep
Administrative Law Judge