

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rahman Bush

v.

Philadelphia Gas Works

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C-2024-3046078

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This Initial Decision sustains the Formal Complaint in part and dismisses the Formal Complaint in part. Complainant failed to meet his burden of proof that Philadelphia Gas Works violated the Public Utility Code, a Commission regulation, or a Commission Order by failing to accept his “negotiable instruments” as payment. Complainant met his burden of proving that PGW improperly held him liable for all arrearages since the December 20, 2021, bill.

HISTORY OF THE PROCEEDING

On January 12, 2024, Rahman Bush (Complainant or Mr. Bush) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission

(Commission) against Philadelphia Gas Works (PGW, Company or Respondent).¹ In his Complaint, Mr. Bush checked the box for “Other” and explained:

(1) BCS Decision States 66 Pa.C.S. § 1407(b) [a]llows a public utility can establish that an applicant previously resided at a property through credit reporting service, lease, [d]eed, or mortgage.

(2) [sic] Philadelphia Gas Works (PGW) concluded that Rahman Bush had been linked to the property but not able to undoubtedly prove Rahman Bush resided at the property in which he provided security application for.

(2) Due to adverse action taken from (PGW) Rahman Bush per consumer rights[,] requested the written adverse action notice be sent to them to dispute inaccurate consumer reporting.

¹ This matter is marked as an untimely appeal of a decision by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3952643. Complainant filed his Notification of Intent to Appeal BCS Decision and Request for Formal Complaint Forms timely. 52 Pa. Code 56.172(a). The Secretary’s Bureau timely sent the Formal Complaint form to Complainant. 52 Pa. Code 56.172(b). The Formal Complaint forms were marked “Must be returned by January 11, 2024.”

Complainant’s Formal Complaint is dated January 10, 2024, and the Complaint is marked as received by the Secretary’s Bureau on January 12, 2024. Complainant attempted to eFile the Formal Complaint on January 11, 2024, but was met with filing issues. The Secretary’s Bureau notified the Complainant of the filing issues and instructed the Complainant to re-file the Formal Complaint Form. Complainant was able to re-file the Formal Complaint on January 12, 2024.

A Complainant may file a formal complaint after 30 days if good cause is shown. *See* 52 Pa. Code § 56.172(d). Further, a presiding officer or the Commission may disregard an error or defect of procedure or waive a requirement that does not adversely affect a substantive right of a party, particularly in proceedings involving *pro se* litigants. 52 Pa. Code §§ 1.2(a), (c), (d). Therefore, while marked as an untimely appeal, because the Complainant had attempted to timely file the Formal Complaint form, and because waiver of this procedural requirement does not adversely affect a substantive right of a party, and because Complainant is a *pro se* litigant, this matter will be treated as a timely appeal of a BCS determination. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

(3) PGW[’s] willful noncompliance of Regulation B [sic] § 202.2(c) and FCRA § 701(d)(6) gave no chance for Rahman Bush to dispute the cause of adverse action.

(4) [U]nder duress, Rahman Bush as holder in due course of the coupon of indebtedness[,] tendered payment to P.G.W. 11.16.23. PGW has not returned tender of payment as dishonored and has chosen to acquiesce to the presentment tendered.

(5) On 1-9-2024 PGW was Notified by Rahman Bush of their dishonor of tendered payment and acquiescence of presentment by telephone communications.

Compl. ¶ 4. As relief, Mr. Bush requested the following:

Rahman Bush requests the P.U.C. to order the P.G.W. to render services in Rahman Bush name per security application provided. As well as credit the balance of the payment tendered on behalf of the prior applicant of the property. If services are not rendered within 24 hours of decision by P.U.C. Rahman Bush requests the tendered payment delivered 11.16.2023 and security application be rescinded from P.G.W. and all equity and interest be returned to Rahman Bush.

Compl. ¶ 5.

On February 26, 2024, PGW filed a timely Answer to the Formal Complaint which admitted or denied various material allegations of the Complaint.² The Answer explained that the Complainant was linked to the property since November 2021 via an Experian report.

By Hearing Notice dated March 1, 2024, an Initial Call-In Telephonic Hearing was scheduled for April 1, 2024, and the matter was assigned to me.

² The Formal Complaint was served on PGW on February 6, 2024.

A Prehearing Order was issued and served on March 15, 2024, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On April 1, 2024, the hearing convened as scheduled. Attorney Graciela Christlieb appeared on behalf of PGW. Rahman Bush appeared along with Chela Daniels who held herself out to be Mr. Bush's power of attorney. I informed Ms. Daniels and Mr. Bush that Ms. Daniels could not represent Mr. Bush in the hearing if she is not a licensed attorney. However, I granted Complainant's continuance request, over PGW's objection, and explained that I would schedule a prehearing conference to discuss the power of attorney representation issue and set a date for the hearing. I explained that I would listen to argument as to why Mr. Bush and Ms. Daniels feel Ms. Daniels has the authority to represent Mr. Bush as his power of attorney. That same day, my Interim Order was issued, formally granting Complainant's continuance request.

On April 1, 2024, by Initial Call-In Telephonic Prehearing Notice, a Prehearing Conference was scheduled for May 8, 2024 at 10:00 a.m. Also, a second Hearing Notice was issued scheduling the hearing for May 14, 2024 at 10:00 a.m.

On April 4, 2024, a corrected Hearing Notice was issued changing the May 14, 2024 hearing time from 10:00 a.m. to 1:30 p.m.

On May 8, 2024, the Prehearing Conference was held as scheduled. The Complainant appeared, *pro se* and Attorney Graciela C. Christlieb, Esq., appeared on behalf of PGW. Complainant informed me that he would be representing himself and that there would be no request or argument for Ms. Daniels to represent him as his power of attorney.

On May 14, 2024, the hearing convened as scheduled. The Complainant appeared, *pro se*. Attorney Graciela C. Christlieb, Esq., appeared on behalf of PGW and presented the testimony of one witness, Jessica Antonetti, senior customer review officer. PGW's witness sponsored nine exhibits, which were admitted into the record. The following Exhibits were entered into the record:

PGW Exhibit 1 – 8/5/23 Customer Contact

PGW Exhibit 2 – 8/10/23 Experian Connect Check

PGW Exhibit 3 – Example of Letter 5

PGW Exhibit 4 – Statement of Account

PGW Exhibit 4A – Proof of Payment

PGW Exhibit 5 – Proof of Payment

PGW Exhibit 6 – 11/6/23 PGW Letter

PGW Exhibit 7 – Negotiable Instrument

PGW Exhibit 8 – Opening and Closing BCS No. 3952643

The record closed on June 10, 2024, when I received the 66-page transcript.

FINDINGS OF FACT

1. The Complainant is Rahman Bush, an individual who resides at 5842 North Hope Street, Philadelphia PA 19120 (service address) since August 7, 2023. Tr. 12.

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provided gas service at the service address.

3. On or around August 5, 2023, Mr. Bush filled out an online application with PGW requesting to open an account for gas at the service address in his name. PGW Ex. 1.

4. PGW ran an Experian report that “linked” him to the address since November 2021. PGW Ex. 1; Tr. 37.

5. Because the Experian report “linked” Complainant to the address, PGW is requiring Mr. Bush to assume a \$5,227.35 transferred balance, should service be placed in his name. Tr. 41, 42.

6. The \$5,227.35 bill is calculated from December 28, 2021 until November 23, 2023. Tr. 42.

7. Since at least November 2021, the PGW bill for the service address was in the landlord/owner’s name. Tr. 42; PGW Ex. 4.

8. The landlord failed to pay the PGW bill. Tr. 27-28; PGW Ex. 4.

9. Mr. Bush did not reside at the service address prior to August 7, 2023. Tr. 13, 24-25, 27-28.

10. Mr. Bush submitted two documents as alleged negotiable instruments to pay the alleged arrearage. PGW Ex. 5, 7.

11. The first document is a 1099-A tax form for “Acquisition or Abandonment of Secured Property.” PGW Ex. 5 at 3.

12. The second document is an October 21, 2023 PGW bill on which Mr. Bush filled out the amount to be paid and wrote “Pay to the order of Philadelphia Gas Work six thousand five hundred seventy-two dollars 09/100 cent” and signed the document “Rahman Bush/holder in due course Agent.” PGW Ex. 7.

13. PGW accepts cash, check, credit, debit and money orders as payment for their bills. Tr. 57.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 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 complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order, or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. 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. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

Payment/Negotiable Instruments

Complainant makes muddled arguments related to an alleged payment he made to PGW. He argues that he provided payment via negotiable instrument which was not returned to him by PGW and was therefore accepted. Tr. 19-21. The documents submitted to PGW as “payment” were submitted as exhibits by PGW. The first document is a 1099-A tax form for “Acquisition or Abandonment of Secured Property.” PGW Ex. 5 at 3. The second document is an October 21, 2023 PGW bill on which Mr. Bush filled out the amount to be paid and wrote “Pay to the order of Philadelphia Gas Work six thousand five hundred seventy-two dollars 09/100 cent” and signed the document “Rahman Bush/holder in due course Agent.” PGW Ex. 7. Accompanying the document was a handwritten letter identifying the document is a “[n]egotiable instrument also known as a check.” *Id.* PGW states that it only accepts cash, check, credit, debit, and money orders as payment for their bills. Tr. 57.

I am interpreting Complainant’s argument as an allegation the PGW provided unreasonable service by failing to credit Complainant’s account after receiving the purported “negotiable instruments.” Section 1501 of the Code, provides, in pertinent part, that a public utility has a duty to maintain “adequate, efficient, safe, and reasonable service and facilities” and to make “repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa.C.S. § 1501. The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. 66 Pa.C.S. § 102. The statutory definition of “service” is to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

Before addressing the reasonableness of the PGW’s refusal to accept the alleged “negotiable instruments,” it is important to note that the interpretation of an instrument’s negotiability under the Uniform Commercial Code is outside the Commission’s jurisdiction. *See Coppedge v. PECO Energy Co.*, Docket No. F-2009-2135893 (Opinion and Order entered Aug. 3, 2010). Notwithstanding the jurisdictional issue, the Commission has consistently held that utilities accepting only cash, certified checks, money orders, validated checks, and credit and debit cards as methods of payments is not unreasonable or in violation of the Code or Commission regulations. *See Feitt v. Duquesne Light Co.*, Docket No. C-2022-3037095 (Opinion and Order entered Dec. 7, 2023); *Scott v. Pa. Am. Water Co.*, Docket No. C-2016-2529902 (Final Order entered July 14, 2016); *Coppedge v. PECO Energy Co.*, Docket No. F-2014-2406180 (Opinion and Order entered Jan. 29, 2015).

Given the above, Complainant has not met his burden of proving that PGW’s failure to accept his “negotiable instruments” as payment was unreasonable under the Code, Commission regulations, or a Commission Order.

Complainant “Linked” to Service Address

Complainant alleges that PGW improperly found that Complainant resided at the property before August 2023 and is improperly holding him liable for a past due balance if he were to open a gas service account in his name at the service address.

The Commission's regulation at 52 Pa. Code § 56.35 provides, in relevant part, as follows:

(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. . . .

(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.

52 Pa. Code § 56.35(a), (b)(1)-(2).

On or around August 5, 2023, Mr. Bush filled out an online application with PGW requesting to open an account for gas at the service address in his name. PGW Ex. 1. Mr. Bush provided PGW a lease date of August 7, 2023. *Id.* PGW ran an Experian report that “linked” him to the address since November 2021. PGW Ex. 1; Tr. 37. Because the Experian report “linked” Complainant to the address, PGW is requiring Mr. Bush to assume a \$5,227.35 bill, should service be placed in his name. Tr. 41. The \$5,227.35 bill is calculated from December 28, 2021 until November 23, 2023. Tr. 42. Since at least November 2021, the PGW bill for the service address was in the landlord/owner’s name. Tr. 42; PGW Ex. 4.

Mr. Bush argues that he did not reside at the service address prior to August 2023. Tr. 13, 25. He testified that he resided at different addresses prior to August 2023. First, he lived at 7250 Walnut Street, Upper Darby PA. Second, he resided at 1719 Coolidge Ave., Willow Grove, PA. He moved out of the Willow Grove address in August of 2023 when he finally moved into the service address. Prior to Mr. Bush moving into the service address, his children and his children’s mother, Ms. Daniels, resided at the property without him. Tr. 24-25. At times, Mr. Bush provided money to Ms. Daniels to pay bills but did not reside at the property before August 2023. Tr. 27. In an attempt to assist his children and their mother, Complainant moved into the service address when he found out that the landlord was not paying the utility bills, as was required in Ms. Daniels’ lease. Tr. 27-28.

Mr. Bush’s direct testimony has put forth a prima facie case that he was not living at the Service address prior to August 2023. With the Complainant having put

forth a prima facie case, the burden of production shifts to PGW to rebut the evidence presented by Complainant.

In rebuttal, PGW relies entirely on an Experian report to link Mr. Bush to the service address. Tr. 38-41; PGW Exs. 1, 2. Ms. Antonetti testified that she had no personal knowledge of what causes addresses to be added to an Experian report. Tr. 55. While Mr. Bush argued multiple times that PGW's case is based completely on hearsay, he did not object to the admission of the Experian report to the record. *See* Tr. 22, 60, 61. Nonetheless, the Experian report is hearsay and is subject to the *Walker* rule, which provides that hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency. Hearsay evidence admitted without objection will be given its natural probative effect and may support a finding of the agency if it is corroborated by any competent evidence in the record. However, a finding of fact based solely on hearsay will not stand. *Walker v. Unemployment Compensation Bd. of Rev.*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The Experian report was not corroborated by any other competent evidence and therefore, is not sufficient to find that Complainant resided at the property prior to August 2023.

Additionally, Mr. Bush argues that being linked to a residence and residing at a residence are two different things. Tr. 16, 23. This is an important distinction, and I agree. There is no evidence that the "link" relied upon by PGW means that Mr. Bush "resided" at the property as required by 52 Pa. Code § 56.35(b)(1). There could be reasons, other than residence, that a credit report may link a person to a property. While the Experian report may provide a starting point for a utility to determine a proper billing party, it does not, on its own, constitute admissible evidence, to support a finding that anyone listed there should be held responsible for disputed charges.

Based on the foregoing, Complainant has met his burden of proof that PGW was improperly holding him liable for all arrearages since the December 20, 2021,

bill. As such, the Complainant shall not be held liable for any outstanding balance incurred with PGW at 5842 North Hope Street, Philadelphia, PA 19210 prior to August 7, 2023. Should Mr. Bush have gas service put in his name, PGW may hold him liable for any gas usage at the service address accrued on and after August 7, 2023. If necessary, Mr. Bush and PGW are encouraged to discuss possible payment arrangements on any arrearage accrued on and after August 7, 2023.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

4. A public utility has a duty to maintain “adequate, efficient, safe, and reasonable service and facilities” and to make “repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.” 66 Pa.C.S. § 1501.

5. The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. 66 Pa.C.S. § 102.

6. The statutory definition of “service” is to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

7. The interpretation of an instrument’s negotiability under the Uniform Commercial Code is outside the Commission’s jurisdiction. *See Coppedge v. PECO Energy Co.*, Docket No. F-2009-2135893 (Opinion and Order entered Aug. 3, 2010).

8. Utilities accepting only cash, certified checks, money orders, validated checks, and credit and debit cards as methods of payments is not unreasonable or in violation of the Code or Commission regulations. *See Feitt v. Duquesne Light Co.*, Docket No. C-2022-3037095 (Opinion and Order entered Dec. 7, 2023); *Scott v. Pa. Am. Water Co.*, Docket No. C-2016-2529902 (Final Order entered July 14, 2016); *Coppedge v. PECO Energy Co.*, Docket No. F-2014-2406180 (Opinion and Order entered Jan. 29, 2015).

9. 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(a).

10. 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. 52 Pa. Code § 56.35 (b)(2).

11. The *Walker* rule provides that hearsay evidence, properly objected to, is not competent evidence to support a finding of the agency. Hearsay evidence admitted without objection will be given its natural probative effect and may support a finding of the agency if it is corroborated by any competent evidence in the record. However, a finding of fact based solely on hearsay will not stand. *Walker v. Unemployment Compensation Bd. of Rev.*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976).

12. Complainant has not met his burden of proving that PGW’s failure to accept his “negotiable instruments” as payment was unreasonable under the Code, Commission regulations, or a Commission Order. 66 Pa.C.S. § 332.

13. Complainant has met his burden of proof that PGW was improperly holding him liable for all arrearages since the December 20, 2021, bill. 66 Pa.C.S. § 332.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Rahman Bush in Rahman Bush v. Philadelphia Gas Works at Docket No. C-2024-3046078 is sustained in part and dismissed in part.

2. That Rahman Bush's claim that Philadelphia Gas Works improperly is holding him liable for arrearages prior to August 7, 2023, is sustained.

3. That all other claims in the Formal Complaint are denied and dismissed.

4. That PGW shall not hold Rahman Bush liable for any outstanding balance incurred with PGW at 5842 North Hope Street, Philadelphia, PA 19210 prior to August 7, 2023.

5. That should Mr. Bush have gas service put in his name, PGW may hold him liable for any gas usage at the service address accrued on and after August 7, 2023.

6. That Docket No. C-2024-3046078 be marked closed.

Date: September 9, 2024

/s/
Michael J. Mroczka
Special Agent