

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

Public Meeting held October 10, 2024

Commissioners Present:

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

Yun Ren

F-2024-3045420

v.

Philadelphia Gas Works

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Philadelphia Gas Works (PGW or Respondent) on August 19, 2024, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Darlene Heep, issued on July 29, 2024, in the above-captioned proceeding. The Initial Decision granted, in part, and denied, in part, the Formal Complaint (Complaint) filed by Yun Ren (Complainant or Ms. Ren) on January 8, 2024, against PGW. For the reasons stated below, we will grant the Exceptions, in part, and deny them, in part, and remand the matter to the Office of

Administrative Law (OALJ) for further proceedings, as deemed necessary, and for the issuance of an Initial Decision on Remand, all consistent with this Opinion and Order.

## I. History of Proceeding

In her Complaint, filed on or about January 8, 2024, Ms. Ren alleged that there were incorrect charges on her bill and that PGW had shut off, or was threatening to shut off, her service. She contended 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.<sup>1</sup>

On February 1, 2024, PGW filed an Answer to the Complaint (Answer) denying that there were incorrect charges on the Complainant's bill and stated that gas was terminated for nonpayment. The Respondent 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 Telephonic Hearing was held, as scheduled, on April 4, 2024, at which the Complainant appeared representing herself. Ms. Ren testified and presented one exhibit, which was admitted into the record. PGW appeared and was represented by counsel who offered the testimony of two (2) witnesses and presented six (6) exhibits, which were admitted into the record. Following the hearing, PGW and the Complainant each submitted two (2) additional exhibits.

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<sup>1</sup> The Complaint is a timely appeal of an informal decision of the Commission's Bureau of Consumer Services (BCS), Case No. 3959080. Such an appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

By Initial Decision issued on July 29, 2024, ALJ Heep granted the Complaint, in part, and denied it, in part, finding that Ms. Ren was not responsible for the entire amount of the outstanding balance owed. Additionally, the ALJ admitted the additional post-hearing exhibits, *supra*, into the record in this proceeding. I.D. at 10.

As noted, above, PGW filed Exceptions on August 19, 2024. No Replies to Exceptions were filed.

## II. Discussion

### A. Legal Standards

As a preliminary matter, any argument or Exception not specifically delineated 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).

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code). 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that PGW 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*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 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*, 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 PGW. If the evidence presented by PGW is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant now has to provide some additional evidence to rebut that of PGW. *Burleson v. Pa. PUC*, 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. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

Pursuant to the PGW 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, Effective October 19, 2007 (PGW Tariff § 8.3).

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*).

## **B. ALJ's Initial Decision**

In her Initial Decision, ALJ Heep made eighteen (18) Findings of Fact (FOF) and reached six (6) Conclusions of Law. I.D. at 3-5, 9. 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.

During the hearing, Ms. Ren contended that PGW should not hold her responsible for theft of service and require her to pay the entire balance not paid by her tenant. She testified that she could not evict the tenant because of the COVID-19 pandemic and that the tenant did not pay rent and did not leave the property until January of 2023. Ms. Ren stated that after the tenant moved out, she began to remodel the property, and during July of 2023, put the property up for rent. The Complainant testified that in October of 2023 after it began to get cold, she contacted PGW to start gas service and was told that gas at the property was stolen. Ms. Ren argued that she should not have 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. I.D. at 7 (citing Tr. at 10-12).

In response, PGW presented testimony that there was theft of service at the service address and that it required the Complainant, as owner, to pay the outstanding bill as a condition of turning the gas on at the service address. According to the Respondent, PGW last found the gas off on January 29, 2020; and when a PGW technician visited the service address on November 27, 2023, to turn on service in the Complainant's name, the

technician found the gas on. PGW calculated that gas was stolen from January 30, 2020, through November 27, 2023. The total amount sought by PGW for the unauthorized usage, based on appliances at the service address and historical usage, was \$10,822.15. I.D. at 8 (citing Tr. at 13, 30-31, 41-47; PGW Exhs. 1, 2, 4, 6-7).<sup>2</sup>

In the Initial Decision, the ALJ cited to PGW Tariff § 8.3, *supra*, and 52 Pa. Code § 56.191 to state that PGW could require payment for unauthorized usage as a condition of restoring the service. However, the ALJ found that 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. I.D. at 8.

The ALJ reasoned that during the time of the COVID-19 emergency, the Complainant did not have dominion and control over the service address, particularly following the March 6, 2020, *Proclamation of Disaster Emergency (Proclamation)* by then Governor Tom Wolf and the March 13, 2020, Commission emergency order

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<sup>2</sup> Ultimately, Ms. Ren paid the full outstanding amount owed in order to restore gas service at the service address. Tr. at 31. As discussed below, the Complainant did not contest that there was theft of service at the address but argued that she should not be responsible for the amount owed. Tr. at 41.

prohibiting termination of public utility service until the end of the moratorium on April 1, 2021. I.D. at 8.<sup>3</sup>

Accordingly, the ALJ determined that Ms. Ren is not responsible for usage charges during the moratorium period of March 6, 2020, through April 1, 2021.<sup>4</sup> Nonetheless, the ALJ found that the Complainant, as landlord/owner, 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. Thus, the ALJ concluded that Ms. Ren was responsible for payment of the remaining outstanding amount prior to restoration of service. I.D. at 8 (citing *Simmons*).

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<sup>3</sup> See, *Proclamation*, at 50 Pa. B. 1644-46 (March 21, 2020). On March 13, 2020, relying on both the *Proclamation* and the Commission’s authority under Section 1501 of the Code, then Chairman Gladys Brown Dutrieuille issued an emergency order establishing a prohibition on the termination of public utility service and directing the reconnection of service to customers previously terminated, to the extent it could be done safely, for the duration of the Governor’s *Proclamation*, or until a time otherwise established by the Commission. The Chairman’s emergency order was later ratified by the Commission at the March 26, 2020, Public Meeting. *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244 (Ratification Order entered March 26, 2020) (*Emergency Order*). The Commission modified the *Emergency Order* to continue the termination moratorium for “protected customers” at or below 300% of the federal poverty income guideline, under certain conditions, and established protections for certain residential and small business customers. *Public Utility Service Termination Moratorium – Modification of March 13<sup>th</sup> Emergency Order*, Docket No. M-2020-3019244 (Order entered October 13, 2020) (*October 2020 Order*). Thereafter, the Commission fully lifted the termination moratorium and allowed disconnections to commence effective April 1, 2021. *Public Utility Service Termination Moratorium*, Docket No. M-2020-3019244 (Order entered March 18, 2021) (*March 2021 Order*).

<sup>4</sup> In making this finding, the ALJ also found it noteworthy that, although overturned by the United States Supreme Court, the Centers for Disease Control and Prevention issued a moratorium on residential evictions during the period of usage at issue in this matter. I.D. at 8 (citing *Ala. Ass’n of Realtors v. Dept. of Health and Human Svcs., et al.*, 141 S. Ct. 2485, 594 U.S. 758 (2021)).

For relief, the ALJ directed PGW to issue a refund to the Complainant for the charges she previously paid for the period of March 6, 2020, through April 1, 2021. I.D. at 10.

### C. Exceptions

PGW filed two Exceptions to the Initial Decision. In its first Exception, the Respondent argues that the ALJ erred by finding that the Complainant could not evict the tenant from the service address during the COVID-19 moratoriums. PGW's second Exception contends that the ALJ erred in deciding that the Complainant did not have dominion and control over the service address during the COVID-19 moratoriums. Exc. at 1-4.

Regarding the first Exception, PGW objects to FOF No. 12,<sup>5</sup> which stated that “[t]he Complainant could not evict the tenant from or have the utility services turned off for the service address during the periods of the COVID-19 moratoriums.” Exc. at 1-2. PGW argues that this finding paints an incomplete picture of the effect of the Governor's *Proclamation* and subsequent orders by the Governor on evictions in Pennsylvania during the COVID-19 pandemic. *Id.* at 2.

PGW contends that the Governor's *Proclamation* and the Commission's *Emergency Order* did not affect evictions in Pennsylvania; rather, it was not until May 7, 2020, that the Governor issued an order effectively creating the eviction

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<sup>5</sup> I.D. at 4.

moratorium to start on May 11, 2020. Exc. at 2.<sup>6</sup> The Respondent argues that on May 21, 2020, the Governor made an important amendment to the *Stay Order* as follows:

The provisions of this Order and the suspension of the Acts under this Order apply only to matters involving the nonpayment of monies as well as those proceedings related to removal of any tenant solely because the tenant has held over or exceeded the term of a lease. *The order does not apply to suspend notice requirements relating to evictions for breaches of other covenants.*

Exc. at 2 (citing *Amendment to the Order of the Governor of the Commonwealth of Pennsylvania for Staying the Notice Requirements for Certain Actions Related to the Dispossession of Property*, dated May 21, 2020 (*Stay Order Amendment*) (emphasis in original, by PGW)).

PGW proffers that the *Stay Order Amendment* made clear that landlords, such as the Complainant, could evict tenants under some circumstances, just not solely due to nonpayment of rent or exceeding the term of the lease. The Respondent asserts that the *Stay Order Amendment* was included in a later order issued by then Governor Wolf, on July 9, 2020, which extended the original *Stay Order* through August 31, 2020. Exc. at 2-3 (citing *Order of the Governor of the Commonwealth of Pennsylvania for Staying the Notice Requirements for Certain Actions Related to the Dispossession of Property*, dated July 9, 2020).

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<sup>6</sup> PGW cites the *Order of the Governor of the Commonwealth of Pennsylvania for Staying the Notice Requirements for Certain Actions Related to the Dispossession of Property*, dated May 7, 2020 (*Stay Order*). The Respondent quotes the eviction related provision in the *Stay Order* which provided that: “Commencing on May 11, 2020, the notice requirements mandated by the Landlord and Tenant Act of 1951 and the Manufactured Home Community Rights Act are stayed for 60 days, thereby tolling the ability to commence the timelines necessary for the initiation of eviction proceedings.” Exc. at 2 (citing *Stay Order* at 3).

Additionally, PGW argues that the Commission's *Emergency Order* establishing the service termination moratorium did not affect the Complainant's rights to gas service at the service address because she was neither the customer of record nor the ratepayer and could not have her tenant's gas service terminated regardless of the existence of a termination moratorium. In summary, PGW objects to the implication in FOF No. 12, that there was a complete ban on evictions in Pennsylvania during the COVID-19 moratoriums, because it is not supported by the record or the law. Exc. at 3.

In its second Exception, PGW objects to the ALJ's conclusion that Ms. Ren did not have dominion and control over the service address during the time of the COVID-19 emergency and was not responsible for usage charges during the moratorium period of March 6, 2020, through April 1, 2021. The Respondent takes further exception to the use of the moratorium end-date of April 1, 2021. Contending that the Complainant's rights were not impacted by the service termination moratorium, PGW argues that an alternative end date of the moratorium on evictions – August 31, 2020 – would be more appropriate. Exc. at 3.

In support, PGW asserts that then Governor Wolf's orders issued during the time of the COVID-19 pandemic did not affect the rights or duties of a property owner such that they would no longer be considered to have dominion and control over their property. Moreover, the Respondent argues that Pennsylvania law is clear that a lease is in the nature of a private contract and is to be controlled by the principles of contract law. Exc. at 3 (citing *Pugh v. Holmes*, 405 A.2d 897, 903 (Pa. 1979)). PGW submits that there is nothing in the Governor's orders issued during the time of the COVID-19 pandemic that would authorize interference with private contracts. According to the Respondent, those orders could no more alleviate a property owner of dominion and control over that property than they could vitiate the implied warranty of habitability. Exc. at 3.

Instead, PGW contends that the language of the Governor's orders clearly indicates that the landlord retains dominion and control of the property. Specifically, the Respondent argues that, by specifying that the *Stay Order* does not apply to suspend notice requirements relating to evictions for breaches of other covenants, the *Stay Order Amendment* and the subsequent order by the Governor acknowledged that a property owner retains dominion and control such that they would be aware of any breaches of other covenants. Exc. at 4.

#### **D. Disposition**

In her Initial Decision, the ALJ determined that Ms. Ren lacked dominion and control of the service address from March 6, 2020, through April 1, 2021, such that she should not be responsible for the theft of service that occurred during that time. PGW's Exceptions challenge this finding by essentially arguing that Ms. Ren continued to have dominion and control over the property by virtue of being owner and landlord of the service address. According to PGW, nothing contained in then Governor Wolf's *Proclamation*, and subsequent orders or the *Emergency Order* of the Commission relieved her of such dominion and control. We agree with PGW.

It is well-established that a property owner is responsible to have known, or should have known, of tampering and theft of service occurring at the property. *Simmons* at 19; *Lawrence Jones v. Philadelphia Gas Works*, Docket No. C-2019-3007984 (Opinion and Order entered July 16, 2020) (*Jones*). In theft of service cases, a property owner must present evidence or otherwise rebut the presumption of dominion and control to avoid responsibility for the service charges. *Jones* at 19-20; *Victor Ruffin v. Philadelphia Gas Works*, Docket No. F-2018-2646481 (Initial Decision issued October 11, 2018; Final Order entered December 6, 2018).

Here, the ALJ reasoned that the COVID-19 emergency prevented Ms. Ren from exercising dominion and control of the service address, particularly after the issuance of the Governor's *Proclamation* and the Commission's *Emergency Order*. As a preliminary matter, we acknowledge that the COVID-19 pandemic created exigent circumstances requiring extraordinary governmental actions to help protect public health and safety. However, upon review, none of the governmental actions cited in the Initial Decision operated to remove, or otherwise diminish, the property rights of landlords during the pandemic. Specifically, we can find no provision in the Governor's *Proclamation* or the Commission's *Emergency Order* directly diminishing or relieving property owners of their property rights or responsibilities. Thus, we find no legal support for the determination that the pandemic in general after the issuance of the *Proclamation* and the *Emergency Order* impacted a property owner's dominion and control of his or her property during the period of the emergency.

For purposes of this proceeding, the Complainant retained the burden of demonstrating that she was not responsible for the theft of service that occurred because she lacked dominion and control of her property. Ms. Ren testified generally that she could not remove her tenant because of the COVID-19 pandemic. Namely, Ms. Ren asserted, "[t]he tenant moved in sometime in 2019, and the tenant stopped paying rent in 2020. I've been trying to chase him away for three years, from 2020 to 2023. I only got my property back in January of 2023." Tr. at 11. Although Ms. Ren presented additional testimony of finding the property in poor condition after the tenant's departure, there was no evidence presented to support a finding that she was prevented from exercising dominion and control of the property during the period after the tenant stopped paying her rent. Tr. at 15. For example, there is nothing in the record indicating that she was denied or otherwise prevented from being able to access the premises. Accordingly, consistent with prior Commission determinations in theft of service cases, we find that the Complainant has not satisfied her burden of proof to rebut the presumption of dominion and control of her property.

Thus, we shall grant PGW's Exceptions pertaining to the findings in the Initial Decision that Ms. Ren lacked dominion and control, and shall reverse the determination that the Complainant is entitled to a refund for charges during the COVID-19 emergency period from March 6, 2020, through April 1, 2021. However, for the reasons discussed below, we shall deny PGW's request to dismiss the Complaint in its entirety, because the evidentiary record pertaining to PGW's curb valve safety checks is incomplete.

During the hearing, the ALJ questioned PGW's witness, Ms. Wendy Vacca, as to whether PGW knew that the gas was on continuously during the period for which it charged the Complainant. Ms. Vacca replied: "No, we don't." Tr. at 37. Later, PGW counsel asked Ms. Vacca whether PGW had gone back to the property after the date was originally shut off to check on the status of the curb valve. Ms. Vacca replied that she did not have the records to show whether PGW later returned to the property, but if permitted, could check the record system to verify this question. Thus, PGW counsel requested, and the ALJ granted, PGW's request to check and submit those records. Tr. at 39.

After the close of the hearing, PGW submitted two extra exhibits, one of which pertained to two customer contact records dated December 25, 2021, and February 13, 2022. PGW Exh. 7. The customer contact records purport to comment on a "Curb Valve Safety Recheck" at the service address and appear to state that a "CB" could not be located. *Id.* Although this exhibit was later admitted into the record pursuant to an ordering paragraph in the Initial Decision, no further hearings were held and, therefore, there was no testimony about it.

PGW Exhibit No. 7, however, raises questions that may be relevant to the ultimate findings of the Commission. On the face of the exhibit, it appears that PGW did not complete a curb valve safety check on the premises on two separate occasions, on

December 25, 2021, and February 13, 2022. Without testimony to clarify this exhibit, we cannot determine why such safety checks appear not to have been completed and whether any other follow-up checks were attempted or undertaken between January 29, 2020, the last date PGW found the curb valve off, and November 27, 2023, the date the PGW technician found the gas to be on. In other words, testimony pertaining to the Respondent's efforts to conduct curb valve safety inspections and to verify whether the gas remained off during the nearly 46-month interim period may have relevance before assigning responsibility for the remaining charges owed.

Thus, we believe that a further development of the record about PGW's curb valve inspections of the service address is necessary before the Commission can ultimately resolve this Complaint proceeding. At present, the ALJ found that Ms. Ren is responsible for all periods of unauthorized gas usage outside of the period of March 6, 2020, through April 1, 2021. I.D. at 8. This finding shall be vacated to allow any further development of the record pertaining to PGW's attempted curb valve safety inspections noted in PGW Exhibit No. 7. Accordingly, we shall remand this matter to the OALJ for further proceedings, as deemed necessary, and for the issuance of an Initial Decision on Remand. Such a remand shall be limited to the consideration of any testimony pertaining to the post-hearing exhibits entered into the record and the issue of curb valve safety checks at the service address, consistent with this Opinion and Order.

In summary, based upon our review of the record and the applicable law, we shall grant the Exceptions, in part, deny them, in part, and remand the proceeding to the OALJ for further proceedings, as deemed necessary, and for the issuance of an Initial Decision on Remand, all consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions, filed by the Philadelphia Gas Works on August 19, 2024, are granted, in part, and denied, in part, consistent with this Opinion and Order.
  
2. That the Initial Decision of Administrative Law Judge Darlene Heep, issued on July 29, 2024, pertaining to the finding that the Complainant lacked dominion and control over the service address for the period of March 6, 2020, through April 1, 2021, is reversed.
  
3. That the remainder of the Initial Decision of Administrative Law Judge Darlene Heep, issued on July 29, 2024, is vacated.
  
4. That this matter is remanded to the Office of Administrative Law Judge for further proceedings, as deemed necessary, and for the issuance of an Initial Decision on Remand, consistent with this Opinion and Order.

**BY THE COMMISSION**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: October 10, 2024

ORDER ENTERED: October 10, 2024