

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Clark	:	
	:	
v.	:	F-2024-3038453
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision finds that PGW properly held the Complainant responsible for the unauthorized usage charges that occurred at the service address between June 27, 2016 and February 16, 2024.

**HISTORY OF THE PROCEEDING**

On April 15, 2024, Kevin Clark (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission).<sup>1</sup> In the Complaint, the Complainant placed a

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<sup>1</sup> The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3965421, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

checkmark in the box indicating that “[t]he utility is threatening to shut off my service or has already shut off my service,” circling the portion reading “already shut off my service.” Under the “requested relief” section of the Complaint, the Complainant advised that he did not know the gas service had been illegally restored. On an attached page, the Complainant further advised that his mother’s death was unexpected, he is still handling bills and other issues, that his mother “did the thing she did . . . to protect my cousin and her mom,” and that he has not lived at his mother’s house for 21 years.

On May 6, 2024, the Respondent filed an Answer admitting that it terminated gas service to 2009 N. 61<sup>st</sup> Street, Philadelphia, PA (service address). The Respondent averred: that on June 27, 2016, PGW terminated the gas service to the service address due to non-payment; that on August 3, 2017, a PGW technician visited the service address and discovered evidence of theft of gas service; that PGW removed the gas meter and left the gas off with anti-theft devices; that on February 19, 2024, PGW visited the service address and discovered evidence of theft of gas service; that PGW left the gas off with anti-theft devices; and that PGW subsequently advised the Complainant that he would have to pay the theft charges prior to PGW restoring gas service to the service address.

By Initial Call-In Telephonic Hearing Notice dated June 28, 2024, an initial call-in telephonic hearing was scheduled for August 5, 2024 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on July 1, 2024. The Prehearing Order also advised the parties of the date and time of the scheduled hearing 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 he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on August 5, 2024. The Complainant, Kevin Clark, appeared *pro se* and testified. The Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of the following PGW employees: Albert Peti, a Philadelphia Gas Works General Supervisor of Revenue Protection and Field Services; Keith Andrews, a Philadelphia Gas Works Service Technician; and Jessica Antonetti, a Philadelphia Gas Works Senior Customer Review Officer. The Respondent presented eleven exhibits, all of which were admitted into the record.

The record closed on August 23, 2024, the date the transcript was filed with the Commission.

#### FINDINGS OF FACT

1. The Complainant in this case is Kevin Clark.
2. The Respondent in this case is Philadelphia Gas Works.
3. The Complainant resides at 2009 North 61<sup>st</sup> Street, Philadelphia, PA. Tr. 8-9.
4. City of Philadelphia records show Stephen D. Clark and Laverne Clark as the owners of the service address since July 21, 2005. Tr. 58; PGW Exh. 11.
5. The Complainant inherited the service address from his mother who passed away on October 21, 2022. Tr. 9.
6. The service address is still in the Complainant's mother's name. Tr. 9.

7. The Complainant is not currently a PGW customer. Tr. 8.
8. On June 27, 2016, PGW terminated gas service at the service address at the curb box for non-payment. Tr. 31; PGW Exh. 1.
9. There has not been a customer of record at the service address since PGW terminated service on June 27, 2016. Tr. 31-32.
10. On August 1, 2017, a PGW Representative visited the service address for a curb valve safety recheck. Tr. 32; PGW Exh. 2.
11. The PGW Representative discovered that the gas service was on at the service address. Tr. 32; PGW Exh. 2.
12. The PGW Representative shut the gas off at the curb with a security device in place. Tr. 32; PGW Exh. 2.
13. On August 3, 2017, a PGW Representative gained entry to the service address for a safety check. Tr. 32-33; PGW Exh. 3.
14. The PGW Representative discovered that the meter had been tampered with, noting that screws and red caps were missing. Tr. 33; PGW Exh. 3.
15. The PGW Representative removed the meter and left the gas off inside of the service address with locking plugs. Tr. 33, 36; PGW Exh. 3.

16. PGW subsequently issued a bill for \$2,055.79 to Laverne Clark for unauthorized service at the service address between June 27, 2016 and August 1, 2017 based on historical usage. Tr. 44-46; PGW Exh. 6.

17. On February 16, 2024, a PGW technician visited the service address for a curb valve safety check. Tr. 41, 58, 61-62.

18. On February 16, 2024, a PGW technician discovered that the curb valve for the service address was on. Tr. 34; PGW Exh. 4.

19. The PGW technician shut the gas off. Tr. 10, 34; PGW Exh. 4.

20. On February 19, 2024, a PGW technician gained entry to the service address to conduct an investigation. Tr. 34; PGW Exh. 5.

21. During the investigation, the PGW technician found a gas house heater, a gas range and a gas water heater. Tr. 36; PGW Exh. 5.

22. The gas appliances found at the service address were operational. Tr. 40.

23. During the investigation, the PGW technician did not find a meter at the property. Tr. 36.

24. The PGW technician discovered that the locking plugs that were installed in 2017 had been removed and a flexible appliance connector hose had been installed connecting the gas from the inlet to the outlet. Tr. 36-37; PGW Exh. 5.

25. PGW subsequently issued a bill for \$6,556.12 for unauthorized service at the service address between August 4, 2017 and February 16, 2024 based on the CPUs of the three appliances found at the service address. Tr. 47, 51-52; PGW Exh. 7.

26. PGW requested an Experian report after the Complainant applied for gas service on February 19, 2024. Tr. 53.

27. The Experian report shows Complainant's connection to the property since December 2001. Tr. 53-54; PGW Exh. 8.

28. During the course of PGW's investigation, the Complainant supplied PGW with a residential lease agreement, dated February 15, 2001, for 19 North Ruby Street in Philadelphia. Tr. 54-55.

29. The February 15, 2001 residential lease agreement showed a lease for a period of 22 years and 10 months, with a start date of March 1, 2001 and an end date of December 31, 2023. Tr. 55-56; PGW Exh. 9.

30. PGW did not accept the residential lease agreement supplied by the Complainant as valid proof of his residence. Tr. 56.

31. The Complainant did not provide any other documentation to demonstrate that he was living at a property other than the service address. Tr. 55.

32. The Complainant has used the service address as his mailing address for his entire life. Tr. 12.

33. The Complainant was aware that the gas service was on at the service address. Tr. 18.

34. The Complainant was aware that no one was paying for gas service provided to the service address. Tr. 18.

### 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. Cmwlt. 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. Cmwlt. 1982); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlt. 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. Commonwealth, Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlt. 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 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).

The Complainant has challenged his responsibility for the balance that accrued at the service address after the gas was illegally restored. Regarding the payment of an outstanding balance, Commission regulations provide in pertinent part:

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 utility was not aware of because of fraud or theft on the part of the applicant.

52 Pa. Code § 56.35(b)(1).

Commission regulations define the term “applicant” as “[a] natural person at least 18 years of age not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage,

deed or lease of the property for which the residential public utility service is requested.” 52 Pa. Code § 56.2. Commission regulations further provide that the term “applicant” “does not include a person who seeks to transfer service within the service territory of the same public utility or to reinstate service at the same address provided that the final bill for service is not past due.” *Id.* Although the Complainant seeks to restore service at the service address, since the last bill issued for gas serve at the service address was issued in 2016 to the Complainant’s mother and is clearly past due, he meets the definition of “applicant” in this case.

PGW seeks to hold the Complainant financially responsible for unauthorized usage that occurred at the service address between June 27, 2016 and February 16, 2024. Although the Complainant supplied a residential lease agreement indicating that he resided at another address until after his mother passed away, the February 15, 2001 lease agreement, which showed an unusually lengthy lease period of 22 years and 10 months, with a start date of March 1, 2001 and an end date of December 31, 2023, is highly suspect. PGW Exh. 9. Moreover, the Complainant acknowledged that he has used the service address as his mailing address for his entire life, that he was aware that the gas service was on at the service address, and that he was also aware that no one was paying for the gas service provided. Tr. 18. Based upon the Complainant’s highly suspect lease agreement, his inability to offer any competent evidence to clearly demonstrate that he lived at another address during the period in question, his acknowledged lifelong connection to the service address, as well as his acknowledged awareness that the gas was on without being paid for, I find that the Complainant failed to establish a *prima facie* case that he should not be held responsible for the unauthorized gas usage that occurred at the service address. The Complainant’s unauthorized usage of gas service during the period in question constitutes fraud or theft of those services. Therefore, PGW did not err by holding the Complainant responsible for the unauthorized usage charges that occurred at the service address from June 27, 2016 through February 16, 2024. 52 Pa. Code § 56.35(b)(1).

Accordingly, the Complainant's Complaint is denied.

### 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 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 utility was not aware of because of fraud or theft on the part of the applicant. 52 Pa. Code § 56.35(b)(1).
5. PGW properly held the Complainant responsible for the unauthorized usage charges that occurred at the service address between June 27, 2016 and February 16, 2024.
6. Complainant failed to sustain his burden of proof to support his claims. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Kevin Clark in Kevin Clark v. Philadelphia Gas Works at Docket F-2024-3048453, is denied.
2. That the Secretary mark the docket closed.

Date: November 18, 2024

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