

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>ALEXANDER SMITH</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>F-2012-2315538</b>
	:	
<b>PHILADELPHIA GAS WORKS</b>	:	
<b>Respondent</b>	:	

**REPLY BRIEF OF COMPLAINANT ALEXANDER SMITH**

**I. INTRODUCTION**

In this case, PGW terminated service and billed the Complainant for alleged unauthorized use of gas service at 3348 E Street in Philadelphia. Complainant has demonstrated by a preponderance of the evidence that there was no unauthorized use of gas at his property and that any alteration to the meter was caused by a third party without Complainant's consent. PGW contends that there is adequate evidence to conclude that Complainant benefited from unmetered gas usage and to support a determination that Complainant is responsible for estimated previously unbilled charges extending back to November 2007. (PGW M. B. at 3-7). As demonstrated in this Reply Brief, the record does not support PGW's conclusions.

**II. ARGUMENT IN REPLY TO PGW**

**A. There is no evidence that Complainant benefited from unmetered gas use.**

In its Main Brief, PGW argues that it is reasonable to conclude that the Complainant obtained gas service that was unmetered. This argument runs contrary to the clear weight of the evidence. It is unreasonable to conclude that the Complainant obtained unmetered gas service

because Complainant's meter transmitted actual readings to PGW during the disputed period and PGW tested the meter following its removal and found it was able to measure gas accurately.

**1. PGW claims that Complainant's meter was unable to register gas usage but the meter transmitted actual readings to PGW during the disputed period.**

PGW argues that the meter was found in such a state that it would not register gas usage. In its Main Brief PGW states that "tampering, in effect, deactivated the meter from measuring gas passing through it..." (PGW M. B. at 5). This claim is contradicted by PGW's own evidence, which shows the meter was measuring actual gas usage during the disputed period. (PGW Exhibit 1). The statement of account reflects actual and not estimated CCF usage during the disputed period. If PGW were correct in its position that tampering deactivated the meter's ability to measure gas passing through it, then Complainant's bills should show no gas consumption during the disputed period; to the contrary, Complainant's bills reflect that there was gas consumption at the property and are consistent with his testimony about his diminished use of gas service over the life of his account with PGW.

Where his bills do indicate zero usage during five of the months in 2011, Complainant has testified that he consumed no gas during that time. (Tr. at 52). Complainant has supported this claim by introducing evidence to show that neither his gas hot water heater nor his gas range were functioning during the disputed period. (Smith Exhibit 2; Smith Exhibit 12). He further introduced evidence to show that he used a strategically placed kerosene heater and an electric radiator to provide heat to his home. (Tr. at 41; Smith Exhibit 1; Smith Exhibit 4 Unredacted; Late-filed Smith Exhibit 5). Finally, Smith testified that during the few months of zero usage in 2011 he completely stopped using the gas furnace and turned off the pilot light. (Tr. 52).

To the extent that PGW is inferring that meter tampering impaired the meter's ability to accurately measure a significant portion of Complainant's gas usage, the evidence again favors the Complainant. PGW has alleged that the ERT's position on the meter was altered (PGW M. B. at 5) but PGW has not introduced any evidence to show that the meter was incapable of accurately measuring gas usage. The Complainant contends that the meter functioned properly and he has presented a reasonable, lawful explanation for the diminished gas use in his account history; namely, that he reduced his gas heat use over the life of his account and relied on non-gas appliances, including a microwave, an electric frying pan, an electric hot water heater, a kerosene heater, and an electric radiator.. (Tr. 12-18; Smith M. B. at 15-20).

**2. PGW claims that tampering of the ERT prevented the meter from measuring gas passing through it; however, when PGW tested the meter subsequent to its removal, it found that the meter could still measure gas accurately.**

PGW has failed to present any evidence to show that the meter was incapable of accurately measuring gas usage in the allegedly altered condition, i.e., with the ERT "cocked." Subsequent testing of the meter by PGW confirmed that the meter could measure gas accurately. (PGW M. B. at 5; PGW Exhibit 6). There is no evidence to suggest that PGW tested the meter on the scene and found the meter unable to measure gas. In the absence of such evidence, PGW's determination that the meter was able to properly measure gas use supports Complainant's claim that the meter accurately measured Complainant's gas use during the disputed period.

All of the available documentary evidence supports a finding that Complainant's meter was functioning properly during the disputed period. The Complainant's meter recorded actual use and PGW's testing confirmed that the meter could accurately measure gas usage. In addition, PGW has acknowledged that the index reading from the meter and the reading noted on the ERT of the automatic reading device were identical. (PGW M. B. at 2). This confirms that the meter

registered the same amount of gas use that was transmitted to PGW. Finally, the meter did not send any tamper count or other signal to PGW during the disputed period to suggest that there was a problem with the meter. (Smith M. B. at 9-11).

**B. PGW's demand for charges linked to unauthorized use is unreasonable.**

In its Main Brief, PGW argues that its estimated charges are reliable and reasonable (PGW M. B. 5 -7 ). PGW's estimate, however, is unreasonably derived from Complainant's usage during a period, ten years previously, in which he was enrolled in a Customer Assistance Program. In addition, PGW's estimate does not take into account that Complainant did not rely exclusively on gas to heat his home during the disputed period. Finally, PGW's estimate is abnormally high when compared with Complainant's use and billing charges during years that are not in dispute.

**1. PGW's estimate is based on historical use during a period when Complainant was enrolled in a Customer Assistance Program and not billed for actual use.**

PGW has based its estimate of gas consumed during the disputed period on Complainant's actual gas use from July 5, 2001 through June 3, 2002. (PGW M. B. at 2). During that period, Complainant was enrolled in PGW's Customer Assistance Program, the Customer Responsibility Program (CRP). (Tr. at 127). As a CRP customer, Complainant's usage did not reflect the amount that he was asked to pay every month. PGW's estimated use is unreliable because it derives from Complainant's use during a period of likely increased gas use. Complainant testified that he used more gas during the period in which he was enrolled in CRP and his bills reflect a pattern of diminished gas use following his removal from the program. (Tr. at 17; PGW Exhibit 1).

**2. PGW's estimate is unreasonable because Complainant did not rely exclusively on gas to heat his home during the disputed period.**

PGW seeks to discredit Complainant's evidence that he supplemented his gas heat with a strategically located electric radiator and kerosene heater by dismissing as inconclusive Complainant's evidence of increased electrical consumption during the disputed period. (PGW M. B. at 7). PGW asserts that Complainant's Late-filed Exhibit 5 fails to show any significant differences in electric use during the heating seasons. (PGW M. B. at 7). To the contrary, as graphically demonstrated in the second table in Complainant's Main Brief, PECO's usage data reveals an average increase in electrical consumption during all but one of the cold weather periods in dispute. (Smith M. B. at 19-20). The data supports Complainant's claim that in lieu of heating his entire home with gas, he strategically heated his bedroom with a single electric radiator and also used a kerosene heater. (Tr. at 41).

PGW also argues that the PECO usage data shows an increase in electrical use during the heating seasons since Complainant's gas service was terminated and that this "supports a conclusion that something other than electricity was being used to heat the Service Address." (PGW M. B. at 7). This argument is inaccurate because it fails to acknowledge that Complainant's electrical use during one of the two cold weather periods since the termination of his gas service is in line with his average use during the disputed period (Smith M. B. at 19). PGW's argument also fails to account for Complainant's admission that he lawfully used some gas during portions of the disputed period when it was "bitter, bitter cold..." (Tr. at 54). PGW's termination deprived Complainant of the ability to use gas heat as an occasional winter resource, so it is not surprising that Complainant's electric use shows a modest increase during one of the heating periods since his gas service has been terminated.

**3. Complainant has shown that the estimated bill is unreasonably higher than his bills during periods which are not in dispute.**

PGW's estimate is unreasonable because PGW has available account history for periods that are not in dispute, which could have been the basis for its estimate. (PGW Exhibit 1).

PGW's argument that none of the other years of available data is trustworthy because of possible meter tampering (Tr. at 122 -125) is not persuasive because PGW has presented no evidence to support a finding of unauthorized use during the years that are not in dispute and PGW has not elected to bill Complainant for unauthorized use prior to 2007.

**III. CONCLUSION**

PGW did not have a reasonable basis for terminating Complainant's gas service and billing him for unauthorized use of gas service. PGW has not provided any evidence in support of its determination that Complainant benefitted from unmetered use of gas. PGW's estimated charges for alleged unauthorized use are unreliable and unreasonable.

In summary, Complainant has met his burden to demonstrate the falsity of PGW's claim of unauthorized use by showing: that Complainant's meter and ERT continued to record gas usage throughout the period in dispute; that the ERT transmitted that usage accurately at every monthly meter reading; that Complainant's lower usage in the disputed period is explained by the fact that he was using electric and kerosene space heaters and that he was relying on an electric water heater and an electric frying pan.

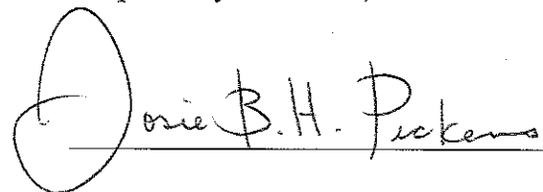
To accept PGW's defense, the ALJ would have to accept an account of events which borders on fantasy: that over the whole period in dispute, Complainant monthly descended into his cellar to disable the meter and ERT for the period between meter reads; that he punctually descended again just before the date of the meter read to reactivate the meter and ERT so that its

diminished level of usage would be transmitted by the ERT to the meter reading truck; and that all this was accomplished without tilting or otherwise causing the ERT to transmit tamper counts to PGW's electronic meter reading system.

For all the foregoing reasons, and for those set forth in Complainant's Main Brief, Complainant requests that the Commission:

- a) declare that the Complainant has proved by a preponderance of the evidence that he is not responsible for unauthorized use at 3348 E Street in Philadelphia;
- b) declare that in erroneously billing Complainant for alleged unauthorized use, PGW has violated its duty to provide reasonably continuous service under 66 Pa. C.S. § 1501;
- c) declare that in requiring Complainant to pay billing charges linked to alleged unauthorized use as a precondition to restoring service, PGW has violated Section 8.3(c) of its Tariff and 66 Pa. C.S. § 1501;
- d) remove all billing charges linked to unauthorized use from Complainant's gas service account with PGW;
- e) grant such other relief as is appropriate, just and in the public interest.

Respectfully submitted,

A handwritten signature in cursive script that reads "Josie B. H. Pickens". The signature is written in black ink and is positioned above a horizontal line.

Josie B. H. Pickens, Esquire  
Thu B. Tran, Esquire

Attorneys for Complainant  
Alexander Smith

December 6, 2013