

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Brown, Sr.	:	
	:	
v.	:	C-2017-2582877
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The Complainant filed a formal complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company). The Complainant failed to sustain his burden of proof, and therefore, this decision dismisses the Complaint.

HISTORY OF THE PROCEEDING

On January 5, 2017, Michael Brown, Sr. (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (PUC or Commission) against the Respondent. The Complainant indicated the following for reasons for filing the Complaint:

- (1) the utility is threatening to shut off or has already shut off utility service;
- (2) a payment arrangement is requested; and
- (3) other.

The Complainant further explained that he did not reside at 5713 Hadfield Street in Philadelphia (service address) when the Respondent alleged that he was responsible for gas service at the service address which was allegedly obtained improperly. The Complainant also

stated that he had health issues and limited income, and therefore, he is willing to negotiate payments of a reasonable amount towards removing any amount that is not waived or removed from the outstanding balance.

The Complaint was served electronically (eService) by the Commission's Secretary on January 5, 2017, according to the audit history of the docket. The eService is pursuant to the Waiver of Section 702 program, under which the Respondent, Philadelphia Gas Works (PGW or Company) waives the service requirements in 66 Pa.C.S. § 702.

Counsel for the Respondent, Graciela Christlieb, Esquire, filed an Answer on January 25, 2017.¹ The Answer admitted that gas service was terminated at the service address and that the Complainant seeks a payment arrangement but denied the remaining allegation of the Complaint.

The Respondent averred in the Answer that the Complainant established service at the service address on January 28, 2005. On September 16, 2009, the Respondent terminated gas service for non-payment. A PGW technician was at the service address on September 16, 2016, for a valve safety check and found the gas on at the curb. The gas service was shut off at the curb on September 16, 2016.

On October 7, 2016, the Respondent completed a safety check at the service address and discovered a bypass of the gas meter. The Respondent found the following gas appliances at the service address:

- (1) heater;
- (2) water heater; and
- (3) range.

On October 12, 2016, the Respondent billed the Complainant in the amount of \$15,147.55 for gas service that was bypassed from September 16, 2009, to September 16, 2016. The bill was based on historical usage of gas at the service address.

¹ In the Respondent's Answer, it referenced an exhibit which was not attached to the Answer. On March 8, 2017, the Respondent filed its Answer with the attached exhibit.

The Complainant disputed these claims and filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 3484511 on October 12, 2016. The Respondent referenced the BCS decision at Case No. 3484511 dated November 28, 2016, which dismissed the informal complaint finding the customer responsible for theft of gas service, and therefore, the outstanding balance plus a reconnection fee in the amount of \$123.23 for a total amount due of $(\$15,147.55 + 123.23 = \$15,270.78)$ \$15,270.78. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice dated March 6, 2017, the matter was scheduled for an initial hearing on Wednesday, April 5, 2017, at 10:00 a.m. The matter was assigned to the undersigned Administrative Law Judge (ALJ), Angela T. Jones.

The initial hearing convened as scheduled on April 5, 2017. Michael Brown, Sr., was present and represented himself. Counsel for the Respondent, Ms. Christlieb, was present and was accompanied by two witnesses.

Mr. Brown testified and did not sponsor any exhibits.

The following witnesses testified on behalf of the Respondent:

- (1) Nathaniel Shrieves;
- (2) Thomas Gerhardt; and
- (3) Jessica Glace.

The Respondent's witnesses sponsored the following eight exhibits:

- (1) PGW Exhibit 1 – 9-19-16 field service order;
- (2) PGW Exhibit 2 – 10-7-16 field service order;
- (3) PGW Exhibit 3 – 9-16-09 field service order;
- (4) PGW Exhibit 4 – property valuation history 5713 Hadfield Street;
- (5) PGW Exhibit 5 – service agreement 5713 Hadfield Street;
- (6) PGW Exhibit 6 – usage calculation;
- (7) PGW Exhibit 7 – account statement; and
- (8) PGW Exhibit 8 – BCS Case No. 3484511 Decision.

The Complainant objected to PGW Exhibit 1. The objection was overruled and PGW Exhibit 1 was admitted into the record. The other seven exhibits were admitted into the record without objection.

The entire transcript was received on May 2, 2017, and consisted of 81 pages of transcribed testimony. The record closed on May 2 2017, when the transcript was received. This matter is now ripe for decision.

FINDINGS OF FACT

1. The Complainant is Michael Brown, Sr., who currently resides and owns the property at 5713 Hadfield Street, Philadelphia, Pennsylvania (service address). Tr. 5, 64, PGW Exhibit 4.

2. The Respondent is Philadelphia Gas Works.

3. The Complainant currently does not have gas service at the service address. Tr. 5.

4. The gas service was in the Complainant's wife's name, Arleen Brown, from June 23, 1993 through January 28, 2008; and in the Complainant's name from January 28, 2008 until September 16, 2009. Tr. 5-6, 29-30, 65, PGW Exhibit 5.

5. On September 16, 2009, the Respondent terminated gas service at the service address for non-payment. Tr. 62, PGW Exhibit 3.

6. The Complainant failed to provide documentation that he lived somewhere other than the service address from September 16, 2009 to September 16, 2016. Tr. 68-69.

7. Currently, there are two adults living at the service address, the Complainant and his adult son. Tr. 10.

8. Complainant was diagnosed with renal disease in 1997, he was on dialysis from 1997 to 2005, he received a kidney transplant in 2005, he was stint dependent from 2005 to 2012, and was back on dialysis from 2012 to 2017. Tr. 14-15.

9. The gas meter at the service address is in the front of the basement.

Tr. 25.

10. The service address has the following gas appliances:

- a. heater—capacity 75,000 BTU;
- b. range—capacity 54,000 BTU; and
- c. water heater—capacity 30,000 BTU.

Tr. 26, 30-31, 33, 35, 56-57, PGW Exhibit 2.

11. Nathaniel Shrieves, Jr. is an employee of PGW for eight years and is a technician that works for the meter investigation unit as well as leaks and piping. Tr. 38-39.

12. On September 16, 2016, Mr. Shrieves performed a curb safety valve check outside of the service address. Tr. 40.

13. A curb safety valve check is performed by a technician sent by Respondent to check whether gas is on or off at a specific property that are normally properties that were previously shut off for non-payment. Tr. 63-64.

14. On September 16, 2016, while Mr. Shrieves performed the valve check outside the service address, he found the gas on, but left with the gas turned off at the curb box to the service address, because according to PGW records the gas service should have been off. Tr. 41-43, PGW Exhibit 1.

15. Mr. Thomas Gerhardt has been employed by PGW for two years as a field service department cadet, which is a person who checks for gas leaks, performs turn ons and turn offs, and meter investigations. Tr. 46-47.

16. On October 7, 2016, Mr. Gerhardt gained access to the service address where he found a foreign substance on the meter swivels; so he recovered the meter, locked up

the meter head, and contacted the Company's revenue protection unit. Tr. 48-57, PGW Exhibit 2.

17. The substance was a sealant to make sure that the gas doesn't leak out of the piping but it was not the substance that is used by the Respondent. Tr. 51-52, PGW Exhibit 2.

18. In order to remove the meter, the meter swivels must be loosened. Tr. 54.

19. The Respondent uses a sealant that is white in color; however, the sealant found at the service address was gray. Tr. 52.

20. Mr. Gerhardt determined that the meter had been tampered because of the gray sealant. Tr. 52-53.

21. The white sealant turns yellow with age. Tr. 58.

22. Jessica Glace has been employed by PGW for 10 years. Tr. 60.

23. Ms. Glace is a senior customer review officer who investigates informal and formal complaints filed by customers at the PUC. Tr. 59-60.

24. Ms. Glace investigated the Complainant's Complaint. Tr. 60.

25. Respondent calculated unauthorized usage of gas service from September 16, 2009 (gas terminated), to September 16, 2016, (gas found on by Mr. Shrieves) through historical usage by the Complainant at the property. Tr. 66-67, PGW Exhibit 6.

26. The amount of unauthorized usage of gas usage calculated from September 16, 2009, to September 16, 2016, was \$15,147.55, which is the bypass charge amount. Tr. 67, PGW Exhibit 6.

27. Respondent is charging the Complainant \$15,147.55 for bypass of gas service from September 16, 2009, to September 16, 2016. Tr. 68, 71, PGW Exhibit 7.

28. BCS rendered a decision on November 28, 2016, at Case No. 3484511, which determined that the Complainant was responsible for the bypass amount. Tr. 68, 74, PGW Exhibit 8.

29. If the Complainant wishes to restore gas service at the service address he would be charged at a minimum the bypass charge amount plus a reconnection fee and a security deposit, which is income dependent, could be added. Tr. 71-72, 75-76, PGW Exhibit 8.

DISCUSSION

I. Applicable Legal Standard

As the proponent of a rule or order or seeking affirmative relief from the Commission, the Complainants in this proceeding bear the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainants must demonstrate 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. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulie*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 602 A.2d 863 (Pa.Cmwlth. 1992).

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. A mere "trace of evidence or a suspicion of the existence of a fact" is

insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa.Cmwlth. 1980).

If the Complainants present evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainants shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainants have not satisfied their burden of proof. The Complainants 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).

II. Incorrect Charges

A. Whether the Complainant was a resident of the service address from September 16, 2009 to September 16, 2016.

The Complainant stated in the fall of 2008, he left the service address and the gas at the service address was terminated then. Tr. 7-9. The Complainant stated that his mother passed away in September of 2008 and he moved to live at his mother's address, 5732 Warrington Avenue, Philadelphia, Pennsylvania on September 25, 2008. Tr. 7-8. The Complainant testified that he lived at his mother's address until the summer of 2015. In the summer of 2015, the Complainant stated that he moved back to the service address. Tr. 9.

Since the Complainant admits that he returned to the service address in the summer of 2015, there is no dispute that he was a resident of the service address from the summer of 2015, to September 16, 2016. The dispute is whether the Complainant was a resident of the service address from September 16, 2009, to the summer of 2015.

The Complainant does not dispute that he has been and is the current owner of the service address since 1992. Tr. 28, PGW Exhibit 4. The Complainant testified that the service address remained his mailing address, even when he allegedly lived at his mother's address on Warrington Avenue. Tr. 28. The Complainant did not offer any witness, document, mail, driver's license, passport, tenancy agreement, etc. to show that he lived at his mother's address. The Complainant alleged he lived at his mother's address from September 2008, to the summer of 2015 or almost seven years.

I do not find it plausible that the Complainant lived at his mother's address for almost seven years without some form of documentation or other evidence to corroborate his residency at his mother's address. Consequently, I find that the Complainant resided at the service address during the period from September 16, 2009, to September 16, 2016.

B. Whether gas service was on at the service address from September 16, 2009, to September 16, 2016.

The Complainant testified that the gas was still off when he returned to live at the service address in the summer of 2015. Tr. 9. The Complainant offers no evidence to corroborate this testimony.

As stated above, the Complainant failed to provide evidence that he was not a resident of the service address from September 16, 2009, to the summer of 2015.

The Complainant stated he suffers from renal disease. Tr. 14. He stated that because of his disease he needs heat. He gets cold quickly. He stated he needed to remedy the lack of gas service for heat at the service address so that he can live there. Tr. 21-22. The Complainant testified that he went through 2015-2016 winter season without gas heat at the service address. He testified he used electric heaters. Tr. 23.

It is plausible that the Complainant lived at his mother's address on Warrington Avenue where there was gas service, and therefore, heat. Tr. 9. Yet, if the Complainant lived there for almost seven years, then he should have something or someone to corroborate that he lived there. The Complainant failed to produce any evidence to corroborate his testimony.

The Respondent offered witness testimony that the gas at the service address was terminated for non-payment on September 16, 2009. Tr. 62, PGW Exhibit 3. Thus, the gas should have remained off until the Respondent had an applicant or customer approach it to commence consuming gas service at the service address. However, the Respondent found the gas on at the curb valve to the service address on September 16, 2016. Tr. 40-43, PGW Exhibit 1. The Respondent did not have any applicant or customer approach it to commence consuming gas service at the service address between September 16, 2009, and September 16, 2016. Furthermore, the Complainant testified that no one other than his wife has had gas at the service address since he has owned the property. Tr. 29. There is no dispute that the Complainant was living at the service address when the gas was found on September 16, 2016.

The Complainant does not dispute that there is a gas system at the service address for heat. It is the Complainant's testimony that he does not use it and it is off. Tr. 30-31. Because the system is still at the service address and was not replaced by an electric system, there is nothing to obstruct the use of the gas system if gas is supplied.

Based on the record, I conclude the more convincing evidence is that the gas service was on during the period of September 16, 2009, to September 16, 2016. The Complainant simply has not established a prima facie case that the gas system was not used at the service address from September 16, 2009, to September 16, 2016.

- C. Whether the gas usage at the service address from September 16, 2009, to September 16, 2016 was unauthorized usage for which the Complainant is responsible

52 Pa.Code § 56.2 defines applicant as,

- (i) 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.
- (ii) The term 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.

The Complainant is a person over 18 years of age. The Complainant is seeking to reinstate service at the service address that he owns and the final bill is past due. Pursuant to 52 Pa.Code § 56.2, the Complainant is an applicant for utility service.

52 Pa.Code § 56.2 defines unauthorized usage of utility service as,

Unreasonable interference or diversion of service, including meter tampering (any act which affects the proper registration of service through a meter), by-passing unmetered service that flows through a device connected between a service line and customer-owned facilities and unauthorized service restoral.

The Respondent's witness testified that there was foreign substance on the meter swivels when he gained access to the service address on October 7, 2016. Tr. 48-57, PGW Exhibit 2. The substance on the swivels was gray and the Respondent uses a substance that is white. Tr. 52. The Respondent's witness testified that when the substance that it uses ages it turns yellow. Tr. 58. The foreign substance is used as a sealant so that gas will not leak out of the connection between the swivels and the piping to the meter. Tr. 51-52, PGW Exhibit 2.

Based on the record evidence, I conclude that the existence of the foreign substance on the swivels, which the Respondent does not use, is evidence of tampering with the meter. This evidence of the meter tampering in conjunction with the evidence of gas service found on when it should have been off on September 16, 2016, is therefore, unauthorized usage of gas as defined by the Commission regulation. 52 Pa.Code § 56.2, *supra* at 11.

D. Whether the Complainant is responsible for billing of unauthorized gas usage

There is no dispute that at the time the tampered meter was discovered, the Complainant was an applicant.

52 Pa.Code § 56.35(a) & (b) state,

(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. **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.**

(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.

(3) Any outstanding residential account with the public utility may be amortized in accordance with § 56.191 (relating to payment and timing).

(Emphasis added.) Pursuant to 52 Pa.Code § 56.35(b)(1), upon discovering a tampered meter, the Respondent acted appropriately by billing the Complainant for service at the service address on October 12, 2016. Tr. 68, 71 PGW Exhibits 7.

I find that it is reasonable and consistent with Commission precedent for the Respondent to use historical usage of the Complainant at the service address along with capacity of the gas appliances found at the service address to calculate the charges due during the unauthorized usage period. I also find it reasonable and consistent with Commission precedent for the calculation to begin on the date the Respondent last determined it lawfully terminated service at the service address for non-payment, September 16, 2009, to the date gas service was

discovered on at the service address, September 16, 2016. See *Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015) at 8. (*Fassett*)

III. Request for Payment Arrangement

Consistent with *Fassett*, I do not find that the Complainant's request for a payment arrangement should be granted. In *Fassett* the Commission stated, "We do not believe a payment arrangement is appropriate when the person requesting the arrangement was involved in a theft of utility service while residing at the service location." *Id.* The Commission decided that Mr. Fassett should not receive a Commission-ordered payment arrangement because he resided at the property while the unauthorized gas usage occurred. Similarly in the instant proceeding, the Complainant was residing at the service address at the time the theft took place. Consequently, he is not entitled to a Commission-issued payment arrangement. The Complaint must be denied and dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

3. The Complainant obtained unauthorized usage of gas service at the service address. 52 Pa.Code § 56.2.

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. The Commission does not provide payment arrangements to customers involved in theft of service while residing at the service address. *Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015).

6. The Complainant had the burden of proof and failed to sustain his burden regarding incorrect charges on his bill for gas usage at the service address and a Commission payment arrangement. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Michael Brown, Sr. against Philadelphia Gas Works at Docket No. C-2017-2582877 is dismissed.

2. That the Secretary's Bureau shall mark this proceeding closed.

Date: May 17, 2017

/s/
Angela T. Jones
Administrative Law Judge