

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patrick Kelly	:	
	:	
v.	:	C-2016-2530214
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

This Decision grants in part and denies in part a Complaint filed by a customer of a utility. The Decision grants the portion of the Complaint which requested a re-calculation of the unbilled usage charge for the customer’s gas heaters. The Decision denies the portion of the Complaint seeking a re-calculation of the unbilled usage charges for the other gas charges. The Decision also denies the portion of the Complaint which requests a payment arrangement on the customer’s outstanding utility bill.

**HISTORY OF THE PROCEEDING**

On February 16, 2016, Patrick Kelly (Complainant or Mr. Kelly) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW), at Docket Number C-2016-2530214. The Complaint was an untimely appeal of a Decision of the Commission’s Bureau of Consumer Services (BCS) in Case Number 3444889. In his Complaint, Mr. Kelly averred that the utility had shut off his service, that there

were incorrect charges on his bill, and that he would like a payment agreement on his outstanding bill.

The formal Complaint was served on PGW electronically by the Commission's Secretary on February 22, 2016.<sup>1</sup>

On July 18, 2016, PGW filed an Answer in response to Mr. Kelly's Complaint. In its Answer, PGW admitted or denied the various averments made in the Complaint. Specifically, PGW admitted that it had shut off Mr. Kelly's gas service on October 15, 2015 because it had discovered that there were meter bypass valves and lines installed before the meter at Mr. Kelly's service address and that Mr. Kelly had been receiving gas service for which he was not billed.. PGW denied that it had incorrectly calculated the unbilled usage charges to Mr. Kelly, and also denied that Mr. Kelly was entitled to a payment arrangement, because the billed amounts were for unauthorized usage at the service address. PGW requested that Mr. Kelly's Complaint be dismissed.

On August 15, 2016, a Hearing Notice was issued establishing an Initial In Person Hearing for Tuesday, October 4, 2016 at 10:00 a.m. and assigning Administrative Law Judge Cynthia W. Fordham as the Presiding Officer. A Prehearing Order was issued on September 19, 2016 setting forth various procedural rules that would govern the hearing.

The hearing convened on October 4, 2016 as scheduled. Laureto Farinas, Esquire appeared on behalf of PGW. Charles Mandracchia, Esquire appeared on behalf of Mr. Kelly. Mr. Kelly testified and sponsored three exhibits which were entered into the record. PGW produced three witnesses and sponsored seven exhibits which were entered into the record. The record in this case consists of a hearing transcript of 186 pages along with the attached exhibits. The record in this case closed on October 25, 2016 when the transcript was filed with the Commission. Judge Fordham subsequently retired, and the matter was reassigned to me as the

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<sup>1</sup> PGW has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on October 17, 2016.

Presiding Officer for the purpose of reviewing the evidence and issuing a Decision in this proceeding. The matter was reassigned to my office effective February 27, 2017.

The record is closed and I am in receipt of the file materials (including the hearing transcript with attached exhibits) in this matter. For the reasons mentioned below, the Complaint will be granted in part and denied in part.

### FINDINGS OF FACT

1. The Complainant in this case is Patrick Kelly.
2. The Respondent in this case is Philadelphia Gas Works.
3. The service address is 700 Strahle Street, Philadelphia, PA 19111.
4. Mr. Kelly started gas service in his name at the service address in 2003.  
PGW Exhibit 1, page 1 of 10; Tr. 9.
5. Mr. Kelly's first PGW bill was issued by PGW to Mr. Kelly on March 26, 2003. PGW Exhibit 1, page 1 of 10.
6. Beginning with the first PGW bill issued to Mr. Kelly on March 26, 2003, Mr. Kelly was using the following gas appliances: 1) automatic water heater rated at 40,000 BTU; 2) range rated at 60,000 BTU; 3) dryer rated at 22,000 BTU. PGW Exhibit 6, page 4 of 6.
7. On May 27, 2003, Mr. Kelly purchased a 100,000 BTU gas heater for his service address. Tr. 31; Complainant's Exhibit C-1.
8. This gas heater was delivered and installed on May 28, 2003. Complainant's Exhibit C-1.

9. On June 5, 2009, Mr. Kelly purchased a 50,000 BTU gas heater for his service address to supplement the existing 100,000 BTU gas heater. Tr. 26, 27, 31, 32; Complainant's Exhibit C-2.

10. This gas heater was delivered and installed on June 6, 2009. Complainant's Exhibit C-2.

11. In April 2014, Mr. Kelly had a pool installed at the service address, along with a 300,000 BTU gas heater to heat the pool. Tr. 12, 46, 47; PGW Exhibit 2, page 4 of 4, PGW Exhibit 6, pages 1 and 2 of 6.

12. Mr. Kelly owns an air conditioning and heating business and has run the business since 1993. Tr. 28.

13. Mr. Kelly installs a lot of air conditioners, heaters, walk-in boxes and refrigeration equipment as part of his business. Tr. 29.

14. On October 14, 2015, PGW visited the service address based on a tip about possible unbilled usage at the service address. Tr. 78-81; PGW Exhibit 2, pages 3 and 4 of 4.

15. PGW discovered that the service address had bypass valves and lines leading to Mr. Kelly's pool and gas appliances which included the 100,000 BTU heater, the 50,000 BTU heater, the 60,000 BTU range, the 40,000 BTU automatic water heater and the 22,000 BTU dryer. Tr. 78-81, 93-101; PGW Exhibit 2, pages 3 and 4 of 4.

16. Mr. Kelly, through his counsel, stipulated that there were bypasses at his service address, although he did not stipulate that he was aware of the bypasses and denied knowledge of the bypasses. Tr. 96, 97, 112.

17. Based on its discovery of the bypasses at the service address, PGW shut off the gas service on October 15, 2015. PGW Exhibit 2, page 3 of 4.

18. PGW then estimated the unbilled usage amounts and originally arrived at an estimate of \$22,089.88 in unbilled usage for Mr. Kelly's pool and gas appliances which included the 100,000 BTU heater, the 50,000 BTU heater, the 60,000 range, the 40,000 BTU automatic water heater and the 22,000 BTU dryer. Tr. 80, 81; PGW Exhibit 6, page 3 of 6.

19. PGW witness Michel Farag provided testimony regarding PGW's calculations for unbilled usage at the service address. Tr. 126-139.

20. Mr. Farag is an employee of PGW and is the manager of major accounts and technical support. Tr. 126.

21. Mr. Farag testified that PGW estimated the unbilled usage for the pool by assuming the pool was opened from May to September, which was typical for a residential outdoor pool in the City of Philadelphia. Tr. 128.

22. Mr. Farag testified that PGW was trying to be extremely conservative in estimating how much gas would be used to heat Mr. Kelly's pool when estimating the two factors used to heat a pool, the first being the initial heating of the water in the pool and the second being the amount of gas needed to continue to keep the pool heated to a typical 78 to 80 degrees which is the typical temperature for a heated pool in the City of Philadelphia. Tr. 128, 129.

23. Mr. Farag testified that PGW used its knowledge of the estimated usage of a typical house in the City of Philadelphia to calculate the unbilled usage for the other gas appliances in Mr. Kelly's house. Tr. 136.

24. Mr. Farag testified that PGW's experience is based on having almost 500,000 customers in the City of Philadelphia. Tr. 136.

25. Mr. Farag testified that a typical heater would run for 700 full load hours and that PGW took into account normalizing this number for the weather, by using heating degree days which are recorded daily on the National Oceanic and Atmospheric Administration's database. Tr. 137.

26. Mr. Farag testified that PGW estimated that Mr. Kelly's water heater would use 300 effective full load hours per year. Tr. 137.

27. Mr. Farag testified that PGW estimated that Mr. Kelly's range would use 125 effective full load hours per year. Tr. 137.

28. Mr. Farag testified that PGW estimated that Mr. Kelly's dryer would use 50 effective full load hours per year. Tr. 137, 138.

29. Mr. Farag testified that PGW was trying to be very conservative with the estimated usage numbers. Tr. 138.

30. PGW initially estimated the unbilled usage as follows:

(a) \$25,585.44 in total estimated usage for the timeframe of March 24, 2003 through October 14, 2015 for the following appliances: the 100,000 BTU heater, the 50,000 BTU heater, the 60,000 range, the 40,000 BTU automatic water heater and the 22,000 BTU dryer.

(b) Mr. Kelly's total billed usage and charges for all the gas appliances listed above for the timeframe of March 24, 2003 through October 14, 2015 in the amount of \$7,780.58 was then subtracted from the \$25,585.44 to arrive at a total unbilled usage estimate for the above appliances in the amount of \$17,804.86.

(c) \$2,215.51 in total estimated unbilled usage for the pool heater for the period of May 1, 2014 through September 30, 2014.

(d) \$2,069.51 in total estimated unbilled usage for the pool heater for the period of May 1, 2015 through September 30, 2015.

(e) The total unbilled usage was initially estimated to be \$22,089.88 (adding (b), (c) and (d) together).

Tr. 80, 81, 136 - 139; PGW Exhibit 6; PGW Exhibit 1.

31. PGW then re-calculated the unbilled usage for the pool after PGW obtained more accurate measurements regarding the volume of water in the pool. Tr. 81; PGW Exhibit 6, page 1 and 2 of 6.

32. PGW's revised unbilled usage figures for the pool heater were \$1,780.53 for the period of May 1, 2014 through September 30, 2014 and \$1,463.23 for the period of May 1, 2015 through September 30, 2015. PGW Exhibit 6, pages 1 and 2 of 6.

33. Adding the revised unbilled usage figures for the pool heater to the total unbilled usage for the gas appliances of \$17,804.86 yielded a revised total unbilled usage estimate of \$21,048.62 ( $\$17,804.86 + \$1,780.53 + \$1,463.23$ ). PGW Exhibit 6, pages 1 and 2 of 6.

34. The calculation of the revised total unbilled usage is listed on PGW Exhibit 1, page 1 of 6 as \$21,047.62, due to a transcription error on PGW Exhibit 6, page 1 of 6, whereby the total estimated usage of all gas appliances (other than the pool heater) was written down as "25,584.44" when the correct number is "25,585.44" as listed on PGW Exhibit 6, page 3 of 6 in the "Grand Total for GSR" column of PGW Exhibit 6, page 3 of 6.

35. The total unbilled usage estimate of \$21,048.62 does not include any billed usage or charges which appear on Mr. Kelley's utility account for the period of March 24, 2003 through October 14, 2015. PGW Exhibit 1, PGW Exhibit 6.

36. The total unbilled usage estimate of \$21,048.62 assumes that Mr. Kelly was using both the 100,000 BTU heater and the 50,000 BTU heater for the entire timeframe of March 24, 2003 through October 14, 2015. PGW Exhibit 6.

37. Mr. Kelly did use the 100,000 BTU heater for the entire timeframe of March 24, 2003 through October 14, 2015. Tr. 31; Complainant's Exhibit C-1.

38. Mr. Kelly only used the 50,000 BTU heater for the timeframe of June 6, 2009 through October 14, 2015. Complainant's Exhibit C-2.

39. PGW Exhibit 6 shows that for the timeframe of March 24, 2003 through October 14, 2015, the total estimated usage of all of Mr. Kelly's gas appliances, excluding the pool heater, was 15,066 CCF (CCF standing for 100 cubic feet of gas).

40. PGW Exhibit 6 shows that for the timeframe of March 24, 2003 through October 14, 2015, Mr. Kelly's combined heater capacity of 150,000 BTU would have accounted for 12,571.65 CCF of total estimated usage had both heaters been in use for the entire timeframe.

41. After PGW shut off service to the service address, Mr. Kelly purchased a propane heating system for his service address appliances and for the pool, along with an electric water heater for his hot water use. Tr. 13, 18-20; Complainant's Exhibit C-3.

42. At the time that PGW shut off Mr. Kelly's service and prepared his final account statement, there was a billed usage and charges balance of \$12.95 on the account, which is not part of the unbilled usage estimated charges. PGW Exhibit 1, page 10 of 10.

43. In order to restore gas service to Mr. Kelly's service address, PGW has assessed a reconnection fee of \$123.23, a dig charge of \$372.00, and a security deposit of \$380.00. PGW Exhibit 6.

## DISCUSSION

### 1) Legal standard

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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In this proceeding, Mr. Kelly filed a Complaint seeking a lower bill along with a payment arrangement on any outstanding balance due to the utility company. Mr. Kelly, therefore, has the burden of proof in this proceeding.

In order to establish a sufficient case and satisfy the burden of proof, a complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa.P.U.C. 196 (1990), Feinstein v. Philadelphia 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, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). 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.Cmwlth. 1982); Edan Transportation Corp. v. Pa. Pub. Util. Comm'n, 623 A.2d 6 (Pa.Cmwlth. 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 and Western Ry. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1960); Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 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*, 501 Pa. 433, 461 A.2d 1234 (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).

2) The complainant stipulated that there were meter bypasses at his house

The initial issue to be determined is whether there were meter bypasses at the Complainant's house, as PGW's estimated unbilled usage charges were based PGW's contention that there were meter bypasses at the Complainant's house.

At the hearing, counsel for Mr. Kelly stipulated that there were meter bypasses at Mr. Kelly's house, and that Mr. Kelly was not disputing PGW's evidence in that regard, although Mr. Kelly was disputing that he had knowledge of the meter bypasses. Therefore, the facts alleged by PGW that there were meter bypasses at Mr. Kelly's house have been judicially established for purposes of this proceeding. Moreover, had there been no such stipulation, I would have concluded that there is ample evidence in the record to establish that there were meter bypasses at Mr. Kelly's house.

Since Mr. Kelly admittedly had meter bypasses at his house, the following issues must now be determined: 1) PGW's authority (if any) to impose unbilled usage charges; 2) the reasonableness of the unbilled usage charges should PGW have the authority to impose the charges; and 3) whether Mr. Kelly is entitled to a payment arrangement in the event that PGW has the authority to impose unbilled usage charges.

3) PGW has the legal authority to assess unbilled usage charges

The Complainant stipulated that he had meter bypasses in his home at the times that he was residing at the service address. Therefore, the Complainant lived at the service address during the periods in question and benefited from the unbilled gas usage. Legally, the Complainant is responsible for the gas usage that the bypassed meter was prevented from detecting at the service address, for reasons discussed below.

Unauthorized use of utility service is defined as:

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

52 Pa.Code § 56.2. The evidence demonstrates that a bypassed meter was kept at the service address when the Complainant was responsible for gas usage. A bypassed meter at the service address is tampered public utility equipment and yields unauthorized gas usage by the Complainant. Regarding the consequence of unauthorized usage, 52 Pa.Code § 56.98(a) states:

A public utility may immediately terminate service for any of the following action by the customer:

(1) Unauthorized use of the service delivered on or about the affected dwelling.

\* \* \*

(3) Tampering with meters or other public utility equipment.

52 Pa.Code § 56.98(a)(1),(3). Based on the foregoing, I conclude that PGW properly terminated service to Mr. Kelly's house on October 15, 2015.

Pursuant to Supplement No. 21 to the Philadelphia Gas Works Gas Service Tariff, First Revised Page No. 44, Pa. P.U.C No. 2 § 8.3, effective October 19, 2007, (Gas Tariff):

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 for inspections, investigations, damages and protective equipment and installations prior to reconnection. (Emphasis added.)

Pursuant to 52 Pa.Code § 5.408(a), I take judicial notice of the Gas Tariff as a document on file with the Commission and the content of any portions of the Gas Tariff discussed in this Initial Decision.

Section 8.3 of the Gas Tariff was in effect and approved by the Commission when PGW shut off service to Mr. Kelly's house on October 15, 2015 and subsequently imposed unbilled usage charges on Mr. Kelly's PGW account. A public utility's Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S. § 316; Kossman v. Pa. Pub. Util. Comm'n, 694 A.2d 1147 (Pa.Cmwlth. 1997)(Kossman); Stiteler v. Bell Telephone Co. of Pennsylvania, 379 A.2d 339 (Pa.Cmwlth. 1977) (Stiteler). Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable or the application of the existing tariff at issue is applied unreasonably. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067, 63 (Pa.Cmwlth. 1981) (Brockway).

The Complainant has provided no record evidence that the tariff is applied unreasonably in the instant proceeding. In fact, the Complainant stipulated that he received unbilled gas service, and that he was merely disputing PGW's computation of the unbilled gas usage. Accordingly, I conclude that PGW had the authority to impose unbilled usage charges and will now discuss PGW's unbilled gas usage computations.

4) Whether PGW's unbilled gas usage charges are reasonable

a) PGW's unbilled usage charge for the pool

PGW's witness Mr. Farag testified as to the methodology used for calculating the unbilled usage charges for the pool at Mr. Kelly's house. Mr. Farag testified that PGW was trying to be very conservative with its calculations. Mr. Farag also testified that PGW took into account the two main factors for determining the unbilled usage charges, the first being the amount of gas it would take to initially heat the pool water at the beginning of the average Philadelphia pool season in May, and the second being the amount of heat it would take to keep the pool heated during the pool season. Mr. Farag also testified that PGW lowered its initial unbilled usage charge after it received updated and more accurate measurements of Mr. Kelly's pool.

In response, Mr. Kelly testified about a propane heater on his property and that he may have used propane to heat his pool for some of the times at issue. However, the documentary evidence produced by Mr. Kelly demonstrates that he did not have the propane heater installed until December 28, 2015, which was after PGW had disconnected his gas service and rendered a final bill including the unbilled usage calculations. In that regard, Complainant Exhibit C-3 contains an invoice from East Coast Propane dated January 12, 2016 showing that the work done on December 28, 2015 consisted of "Labor to do conversion and find and help repair leaks." Therefore, the evidence shows that the heat was converted from gas to propane on December 28, 2015, which is after the events at issue in this case. I also note that this conclusion is supported by Mr. Kelly's testimony, whereby he stated that "currently it's [my house] being heated by propane." Tr. 12, 13. As a result, Mr. Kelly's testimony regarding propane to heat the pool was disregarded in rendering this Initial Decision.

Mr. Kelly also questioned the methodology used by PGW in calculating the unbilled usage charges for the pool, testifying that he would use the weather to heat his pool, and that he did not heat his pool to between 78 and 80 degrees as suggested by PGW. I do not find such testimony to be credible, and conclude that PGW's methodology was reasonable and in

accordance with PGW's Gas Tariff and the Public Utility Code and Regulations. The unbilled usage calculations for the pool are therefore approved.

b) PGW's unbilled usage charges for the water heater, range and dryer

PGW's witness Mr. Farag testified as to the methodology used for calculating the unbilled usage charges for the water heater, range and dryer at Mr. Kelly's house. Mr. Farag testified that PGW was trying to be very conservative with its calculations. Mr. Farag testified that the estimates were based upon PGW's typical home use figures which PGW compiled over the course of running its business of serving almost 500,000 customers in the City of Philadelphia. Based on its experience, PGW estimated that Mr. Kelly's water heater would consume 300 effective full load hours per year, that Mr. Kelly's range would consume 125 effective full load hours per year, and that Mr. Kelly's dryer would consume 50 effective full load hours per year.

In response, Mr. Kelly testified that he replaced his PGW gas service with propane after PGW discontinued service on October 15, 2015. Mr. Kelly testified that his propane expenses were quite low compared to PGW's estimated unbilled gas usage charges. Mr. Kelly argued that if it was far cheaper to use propane than gas, PGW's figures should be revised taking into account the propane usage numbers.

There are several issues with Mr. Kelly's arguments, the most notable of which is Mr. Kelly is comparing apples to oranges from a legal standpoint. Propane heat is different than gas heat. The two heating methods use different chemical compounds, they are run through different equipment, and they are processed using different production methods. Accordingly, the price of one has nothing to do with the price of the other from a legal standpoint.

Another issue is that Mr. Kelly's propane use did not begin until after PGW shut off his gas service due to its discovery of the bypasses at Mr. Kelly's house. Accordingly, Mr. Kelly cannot compare propane usage to gas usage during the relevant timeframe of March 24, 2003 through October 14, 2015. Therefore, even if propane and gas heat were

considered legally similar, comparing different timeframes would not tend to demonstrate that PGW's calculations were incorrect for the PGW timeframe in question.

A final issue is that Mr. Kelly testified that he is currently using electric heat for his hot water because he had to obtain an electric water heater after PGW shut off his gas service. This point was never mentioned during Mr. Kelly's arguments that propane to gas comparisons should yield a substantial reduction in PGW's unbilled usage calculations. Adding the electric water heater component would substantially reduce any savings claimed by Mr. Kelly in comparing his current utility use versus his prior utility use with PGW.

Given the foregoing, I conclude that Mr. Kelly's arguments for a reduction in the PGW calculations based on propane to gas comparisons are not credible and are therefore unpersuasive. Those arguments are therefore rejected in rendering this Initial Decision, and the unbilled usage calculations for the water heater, range and dryer are approved.

- c) PGW's unbilled usage charges for his home heaters -  
The 100,000 BTU and 50,000 BTU heaters

The evidence is clear that PGW based its unbilled usage calculations for Mr. Kelly's 100,000 BTU and 50,000 BTU heaters on the assumption that Mr. Kelly had both heaters in service for the entire unbilled usage period of March 24, 2003 through October 14, 2015. The evidence is also clear that Mr. Kelly did not have the 50,000 BTU heater installed until June 6, 2009. Accordingly, I conclude that Mr. Kelly's Complaint regarding the PGW calculations for the heaters should be sustained, and that those calculations should be revised as set forth below. Mr. Kelly has met his burden of proof with competent evidence to show that the PGW heater calculations were not reasonable under the circumstances.

For purposes of the revised calculations, I will assume that an average "heating season" runs from the middle of the Fall season until the middle of the Spring season during each 12 month period. That would equate to an average customer using heat for the months of October through March of each 12 month period.

I am using the above assumption because I find it to be consistent with evidence produced at the hearing indicating that it is normal for people to use their outdoor swimming pools during the months of May, June, July, August and September of each year. *See*, Tr. 128, 129. I also note that since the 50,000 BTU heater was installed in June of 2009, it would fall in between “heating seasons” regardless of how a “heating season” is defined, because a utility customer would not be using a home heater during what are considered the typical Summer months of June, July and August in any given year. Accordingly, I conclude that there is substantial evidence to support the use of October through March as constituting a “heating season” and to make adjustments to the unbilled usage calculations in that manner.

In Mr. Kelly’s case, his unbilled usage period runs from March 24, 2003 through October 15, 2015. That equates to 12 separate heating seasons, as follows:

- 1) 2003 - 2004 heating season (October 2003 through March 2004);
- 2) 2004 - 2005 heating season (October 2004 through March 2005);
- 3) 2005 - 2006 heating season (October 2005 through March 2006);
- 4) 2006 - 2007 heating season (October 2006 through March 2007);
- 5) 2007 - 2008 heating season (October 2007 through March 2008);
- 6) 2008 - 2009 heating season (October 2008 through March 2009);
- 7) 2009 - 2010 heating season (October 2009 through March 2010);
- 8) 2010 - 2011 heating season (October 2010 through March 2011);
- 9) 2011 - 2012 heating season (October 2011 through March 2012);
- 10) 2012 - 2013 heating season (October 2012 through March 2013);
- 11) 2013 - 2014 heating season (October 2013 through March 2014);
- 12) 2014 - 2015 heating season (October 2014 through March 2015);

Mr. Kelly did not have the 50,000 BTU heater installed until June 6, 2009, meaning that the 50,000 BTU heater would not have entered service until heating season 7) listed above. The 50,000 BTU heater would have been combined with the 100,000 BTU heater for heating seasons 7) through 12) above. For heating seasons 1) through 6) above, only the 100,000 BTU heater would have been in service.

Given the above, Mr. Kelly had six heating seasons with just the 100,000 BTU heater and six heating seasons with both the 100,000 and 50,000 BTU heaters. Since PGW assumed that both heaters (150,000 total BTU) had been in service for all 12 heating seasons, those calculations need to be reduced by one-sixth of the total. This figure is derived by removing one-third of the calculation (50,000 BTU divided by 150,000 BTU) for one-half of the 12 separate heating seasons.

PGW's calculations show the total estimated usage for the heaters, automatic water heater, range and dryer was \$25,585.44, based on total estimated gas consumption of 15,066 CCF for those appliances. *See*, PGW Exhibit 6. The heaters accounted for 12,571.65 CCF of the total gas consumption. Dividing the total into the heaters' consumption yields  $12,571.65 \div 15066$ , which equals .8344 or 83.44 percent of the total consumption. Multiplying .8344 by the total consumption dollar amount yields  $\$25,585.44 \times .8344$ , which equals \$21,348.49. This dollar amount is the total estimated dollar amount attributable to the two heaters for the entire unbilled usage period of March 24, 2003 through October 15, 2015.

Taking the total estimated usage dollar amount of \$21,348.49 attributable to the two heaters and reducing that figure by one-sixth yields  $\$21,348.49 \div 6$ , which equals \$3,558.08. I conclude this is the appropriate deduction to be applied to Mr. Kelly's unbilled usage calculation.

Applying the deduction to PGW's original unbilled usage calculation yields the following results:

- |    |  |             |
|----|--|-------------|
| 1) | Total estimated usage for the heaters, automatic water heater, range and dryer for the period of March 24, 2003 through October 15, 2015 | \$25,585.44 |
| 2) | Deduction for the 50,000 BTU heater not placed in service until 2009   | \$3,558.08  |

3)	Total billed usage and customer charges for the period of March 24, 2003 through October 15, 2015	\$7,780.58
4)	Total estimated unbilled usage for the heaters, automatic water heater, range and dryer, subtracting 2) and 3) from 1)	\$14,246.78
5)	Estimated unbilled usage for the pool for the period of May 1, 2014 through September 30, 2014	\$1,780.53
6)	Estimated unbilled usage for the pool for the period of May 1, 2015 through September 30, 2015	\$1,463.23
7)	Total estimated unbilled usage for all appliances and equipment, adding 4), 5) and 6)	\$17,490.54

Based on the above, the total approved estimated unbilled usage figure is \$17,490.54.

In addition to the total approved estimated unbilled usage figure of \$17,490.54, I approve the following charges, as I have concluded that they are reasonable, are supported by the Gas Tariff, Public Utility Code and Commission Regulations, and were not opposed by Mr. Kelly at the hearing:

- 1) \$123.23 reconnect fee
- 2) \$372.00 dig charge
- 3) \$380.00 security deposit
- 4) \$12.95 outstanding billed usage and charges balance as of the shut off date of October 14, 2015

Since Mr. Kelly has sustained his burden of proof with regard to PGW's heater calculations, the grand total due on Mr. Kelly's PGW account as a result of this Initial Decision is the total approved estimated unbilled usage figure of \$17,490.54 plus charges 1), 2), 3) and 4)

above, for a total due of \$18,378.72. This is the amount that Mr. Kelly must pay in order to have his PGW gas service restored. Having computed that figure, I will discuss the final portion of Mr. Kelly's Complaint regarding his request for a payment arrangement.

5) Mr. Kelly's request for a payment arrangement

Mr. Kelly has requested a Commission approved payment arrangement on any amounts found to be due and owing to PGW. Although Chapter 14 of the Public Utility Code permits the Commission to order payment arrangements in certain instances, the Commission has acknowledged that it has a responsibility to exercise its authority very judiciously when a utility has lawfully terminated a customer for nonpayment. George Crawford v. National Fuel Gas Distribution Corp., C-20066348 (Order entered December 6, 2007). Specifically, the Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills, or who have experienced a significant change of circumstances outside of their control." Id. at 15-16. While the Commission has the authority to establish a payment agreement in cases such as this, the customer is not entitled as a matter of right to the award of a Commission issued payment arrangement. Mandell v. Duquesne Light Co., Docket No. C-20030234 (Order entered March 17, 2004).

The Commission specifically considered the case where a customer benefiting from unauthorized usage requested a payment arrangement on the balance due. In Darnell Fassett v. Philadelphia Gas Works, F-2014-2408541, (Opinion and Order entered April 27, 2015), the Commission stated the following: "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." Order at 8. 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. Since the Complainant in this case was residing at the service address at the time the theft took place, I conclude that he is not entitled to a Commission-issued payment arrangement. As such, the Complaint must be denied with respect to Mr. Kelly's request for a payment arrangement.

For the reasons discussed above, the Complaint is granted in part and denied in part. The Complaint is granted with respect to adjusting the Respondent's estimated unbilled usage charges for the Complainant's two home heaters. The Complaint is denied in all other respects, including the Complainant's request for an adjustment to the Respondent's other estimated unbilled usage charges and the Complainant's request for a payment arrangement.

### CONCLUSIONS OF LAW

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

2. 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).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

4. The Complainant had the burden of proof and sustained his burden regarding incorrect charges on his bill with respect to his two home heaters consisting of the 100,000 BTU heater and the 50,000 BTU heater. 66 Pa.C.S. § 332(a).

5. The Complainant had the burden of proof and failed to sustain his burden regarding incorrect charges on his bill with respect to his pool, automatic water heater, range and dryer. 66 Pa.C.S. § 332(a).

6. A public utility may immediately terminate service where a customer tampered with meters or other public utility equipment. 52 Pa.Code § 56.98(a)(3).

7. In the event a Company's equipment or property is tampered or interfered with, the Customer supplied through such equipment shall pay the amount which the Company

shall estimate is due for service even if such usage is not registered on the Company's meter. Supplement No. 21 to Philadelphia Gas Works Gas Service Tariff, First Revised Page No. 44, Pa.P.U.C. No.2 § 8.3.

8. A public utility's Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. 66 Pa.C.S § 316, Kossman v. PA. Pub. Util. Commn, 694 A.2d 1147 (Pa.Cmwlth. 1997) and Stitler v. Bell Telephone Co. of Pennsylvania, 379 A.2d 339 (Pa.Cmwlth. 1977).

9. A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234 (Order entered March 17, 2004).

10. The Commission has a responsibility to exercise its authority very judiciously when a utility has lawfully terminated a customer for nonpayment. George Crawford v. National Fuel Gas Distribution Corp., C-20066348 Order entered 12/6/07. Specifically, the Commission should exercise its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills. Id.

11. A customer benefiting from unauthorized usage is not entitled to a Commission ordered payment arrangement on the balance due. Darnell Fassett v. Philadelphia Gas Works, F-2014-2408541, (Opinion and Order entered April 27, 2015).

12. The Complainant has failed to satisfy his burden of proof to show that he is entitled to a Commission ordered payment arrangement. Mandell and Fassett, *supra*.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Patrick Kelly against Philadelphia Gas Works at Docket Number C-2016-2530214 is sustained in part; Mr. Kelly is entitled to a reduction of the estimated unbilled usage charges for his home heaters in the amount of \$3,558.08 as set forth hereinabove.

2. That the remaining portions of the formal Complaint filed by Patrick Kelly against Philadelphia Gas Works at Docket Number C-2016-2530214 are denied.

3. That Mr. Kelly is not entitled to a Commission ordered payment arrangement on his outstanding balance owed to Philadelphia Gas Works.

4. That Mr. Kelly is required to pay his entire outstanding balance, including costs and fees owed to Philadelphia Gas Works, prior to restoration of his gas service, as follows:

Total estimated unbilled usage charge in the following amount:	\$17,490.54
Additional fees and charges:	\$123.23 reconnect fee
	\$372.00 dig charge
	\$380.00 security deposit
	\$12.95 outstanding billed usage and charges balance on shut off date of October 14, 2015
Total amount to be paid in order to restore gas service:	\$18,378.72

