

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Angel Matias	:	
	:	
v.	:	F-2017-2583815
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

The formal complaint of an individual who sought restoration of his gas service is dismissed. Upon the discovery that the individual’s meter had been tampered resulting in unauthorized gas service, the gas utility was entitled to seek payment of unbilled gas service before restoring utility service to the customer.

PROCEDURAL HISTORY

Angel Matias (Complainant) filed a formal complaint on January 11, 2017, against Philadelphia Gas Works (PGW). He checked the box noting that the utility was threatening to shut off his service or had already shut off his service. As relief he wanted his service back on.

PGW filed an answer on January 31, 2017. PGW admitted that the Complainant’s service had been shut off. PGW further averred that the Complainant’s service could be reinstated, but that he owed PGW \$9,833.64 for unauthorized usage.

By hearing notice dated March 17, 2017, the complaint was scheduled for a call-in telephonic hearing on April 24, 2017, and assigned to me. I issued a prehearing order on March 20, 2017, which set forth procedural guidelines and instructions for the conduct of the hearing.

The hearing convened as scheduled. The Complainant appeared and was self-represented. He testified on his own behalf. PGW was represented by Graciela Christlieb, Esquire. Tiffany Jones, a PGW senior customer review officer, and Timothy Heffron, a PGW field service technician offered testimony. PGW also offered nine exhibits which were admitted into the record. Following the receipt of the transcript, the record was closed by interim order dated May 26, 2017.

FINDINGS OF FACT

1. The Complainant is Angel Matias.
2. Philadelphia Gas Works (PGW) is a jurisdictional public utility.
3. The Complainant resides at 901 West Seltzer Street (service address) in Philadelphia, Pennsylvania. (N.T. 11)
4. The Complainant has lived at the service address for approximately nine years. (N.T. 23)
5. The Complainant has owned the service address since 2008. (PGW Ex. 4; see also N.T. 23)
6. PGW's records reflect that the Complainant had gas service at 901 West Seltzer Street from March 7, 2004 until June 9, 2005. (N.T. 38; PGW Ex. 2)

7. The Complainant's service was terminated on June 9, 2005, for non-payment. (N.T. 55)
8. The Complainant again had gas service at 901 West Seltzer Street from November 8, 2011 until May 23, 2012. (N.T. 46; PGW Ex. 6)
9. PGW's records reflect that the Complainant called PGW and requested that his gas service be discontinued on May 21, 2012. (N.T. 50)
10. The Complainant called PGW for gas service in the winter of 2016, but he could not recall the date. (N.T. 14-16)
11. On December 8, 2016, a PGW field technician, Timothy Heffron, went to the Complainant's residence to conduct an unbilled usage investigation. (N.T. 60)
12. Mr. Heffron discovered that there was a gas reading in the fuel line. (N.T. 61)
13. Mr. Heffron concluded that the meter had been tampered with because it was missing red caps which seal the screws that hold the electronic reader and transmitter (ERT) head onto the meter. (N.T. 61-62, 63)
14. Since the ERT was removed, PGW was not able to measure the gas consumption. (N.T. 62, 64)
15. Removing the ERT head turns the meter into a pipe bypass. (N.T. 65)
16. Mr. Heffron removed the Complainant's meter, shut off the gas at the curb and installed a locking device on the curb box. (N.T. 34-35, 51, 65-67; PGW Ex. 10)

17. At some point after Mr. Heffron removed the meter, PGW issued a bill to the Complainant for \$9,833.64 for unbilled usage from May 23, 2012, until December 8, 2016. (N.T. 35)

18. PGW estimated usage of 6,635 ccf for the period of time from May 23, 2012, until December 8, 2016, which resulted in an average consumption per day of 3.98 ccf. (PGW Ex. 7)

19. PGW reviewed the Complainant's historic usage history for 12 months from May 5, 2004, until April 5, 2005, and calculated his average usage per day as 3.94 ccf. (N.T. 52-53; PGW Ex. 7)

20. The Complainant's total amount billed from May 5, 2004 until April 5, 2005, was \$2,287.40. (PGW Ex. 7)

21. The Complainant's appliances are electric, except for the heat. (N.T. 28; see also N.T. 67-68)

22. PGW's records do not reflect that anyone had gas service at the service address from May 23, 2012 until December 8, 2016. (N.T. 51)

DISCUSSION

Section 701 of the Public Utility Code (Code), provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the Commission has the jurisdiction to administer, or of any regulation or order of the Commission.¹ A person seeking affirmative relief from the Commission has the burden of proof.²

¹ 66 Pa.C.S. § 701.

² 66 Pa.C.S. § 332(a).

In this matter, the Complainant is the party seeking affirmative relief from the Commission; therefore, he has the burden of proof. This means that he has the duty to establish a fact by a preponderance of the evidence, and must show that PGW has violated the Public Utility Code or Commission regulations by requiring him to pay for unbilled usage before reconnecting his gas service.³

The Complainant argues that PGW should reconnect his service and that he does not owe the back-billed amount. PGW contends that the Complainant bypassed PGW's meter and was receiving gas that he had not paid for. Therefore, PGW is not required to reconnect the Complainant's service until he pays the back-billed amount.

The Commission's regulations permit a public utility to demand payment of an outstanding balance in order to restore service:

A public utility may require the payment of any outstanding balance or portion of an outstanding balance if the applicant or customer resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant or customer resided there, not exceeding 4 years prior to the date of requesting that service be restored. The 4-year limit does not apply in instances of fraud and theft.⁴

The next question is whether it was reasonable for PGW to hold the Complainant responsible for unbilled usage. The Complainant testified that he lived alone at the service address and has lived there for the past nine years. He has owned the property since 2008. PGW's records indicate that the Complainant has had gas service at that address at various points in time. His gas service was discontinued on May 23, 2012, and PGW's records do not indicate that anyone else has had gas service at the address since that time. Therefore, PGW is permitted to hold the Complainant responsible for unbilled usage.⁵

³ *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

⁴ 52 Pa.Code § 56.191(d).

⁵ See also 52 Pa.Code § 56.191(e) (“A public utility may establish that an applicant or customer 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.”)

The next question is whether it was reasonable for PGW to hold the Complainant responsible for the meter tampering. Section 56.2 of the Commission's regulations defines "unauthorized use of utility service" and includes meter tampering in that definition:

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.⁶

The condition of the meter with the removed ERT described by Mr. Heffron meets the definition of "unauthorized use of utility service." The meter was altered to bypass PGW's ability to measure the flow of gas to the service address.

As explained above, the Complainant's own testimony establishes that he lived at the service address during the relevant period of time, May 2012 through December 2016. There is nothing in the record which indicates that anyone else had access or control of the meter facilities or would have benefitted from the ERT bypass. Therefore, it is not unreasonable for PGW to hold the Complainant responsible for the unauthorized usage.

The final question is whether PGW's estimate for the unbilled usage from May 2012 until December 2016 is reasonable. PGW is also not restricted by the four year statute of limitations provided in the Commission's regulation regarding restoration of service when there is an outstanding balance, because the statute of limitations does not apply in instances of fraud or theft.⁷ Meter tampering equates to fraud or theft. Therefore, it may seek payment for unbilled usage from May 2012 until December 2016.

The removal of the ERT turns the meter into a pipe bypass and PGW could not record gas usage. Therefore, PGW did not have any actual meter readings after May 2012, from which to estimate the Complainant's usage. PGW evaluated the Complainant's twelve months of historical usage from May 5, 2004 through April 5, 2005. During that period of time, the

⁶ 52 Pa.Code § 56.2.

⁷ 52 Pa.Code § 56.191(d).

Complainant used an average usage per day of 3.94 ccf and was billed \$ 2,287.40 for his consumption that year.

PGW then used a series of calculators which estimated usage of 6,635 ccf for the period of time from May 23, 2012 until December 8, 2016, which resulted in an average consumption per day of 3.98 ccf. From this estimated usage, PGW generated a bill in the amount of \$ 9,833.64. As the estimated average daily consumption is similar to the Complainant's historical average daily consumption, the amount of the estimated bill is reasonable.

The Complainant failed to prove that PGW violated any Commission regulation or order, of the Public Utility Code. PGW was legally permitted to require the Complainant to pay for unbilled service as a condition for restoring his gas service. Therefore, the complaint will be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this dispute. 66 Pa.C.S. § 701.
2. The Complainant bears the burden of proof. 66 Pa.C.S. § 332.
3. The Commission's regulations permit a public utility to demand payment of an outstanding balance in order to restore service. 52 Pa.Code § 56.191(d).
4. When a public utility discovers unauthorized utility service, it may seek payment for more than four years prior to the date of requesting that service be restored. 52 Pa.Code § 56.191(d)
5. PGW's estimate of the Complainant's unbilled usage from May 2012 through December 2016, is reasonable.

6. The Complainant failed to sustain his burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint of Angel Matias against the Philadelphia Gas Works at Docket No. F-2017-2583815, is dismissed.
2. That the Secretary mark Docket No. F-2017-2583815 closed.

Date: June 29, 2017

/s/
Mary D. Long
Administrative Law Judge