

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Guan Hui Ren	:	
	:	
v.	:	C-2016-2540645
	:	
Philadelphia Gas Works	:	
	:	
Guan Hui Ren	:	
(Appellee)	:	
	:	
v.	:	F-2016-2545083
	:	
Philadelphia Gas Works	:	
(Appellant)	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The Philadelphia Gas Works (Appellant/Respondent or PGW or Company) appealed a decision of the Pennsylvania Public Utility Commission’s (PUC or Commission) Bureau of Consumer Services (BCS) that was in favor of Guan Hui Ren¹ (Appellee/Complainant). Although the Appellant/Respondent sustained its burden of proof that the meter was tampered causing unauthorized usage, the Appellant/Respondent did not prove by the preponderance of the evidence that the unauthorized usage was during the period that it

¹ The Appellee/Complainant’s name appears as Guanng Ren in the matter docketed at F-2016-2545083 but appears as Guan Hui Ren in the matter docketed at C-2016-2540645. “Guanng Ren” appears to be a misspelling of the Appellee/Complainant’s name. This decision refers to the Complainant as Guan Hui Ren.

alleged. This decision grants the appeal of the Appellant/Respondent in part and modifies the alleged period of unauthorized usage.

The Appellee/Complainant filed a separate formal complaint against the Appellant/Respondent. The Appellee/Complainant's allegation of terminated gas service in error was denied but the Appellee/Complainant's allegation of incorrect bills was sustained. Thus, this decision denies the Appellee/Complainant's Complaint in part and sustains it in part.

HISTORY OF THE PROCEEDING

On February 10, 2016, Mr. Ren filed an informal complaint with the Commission's BCS at Case No. 3412240. Mr. Ren alleged that PGW terminated service at his rental unit located at 7563 Battersby Street, Philadelphia, Pennsylvania and removed the gas meter for an unknown reason.

On March 2, 2016, BCS issued a decision granting Mr. Ren's informal complaint because there was no evidence to show a physical bypass of the gas meter. BCS concluded that the Appellee/Complainant was not responsible for the \$3,286.75 bill that was levied after the Appellant/Respondent removed the gas meter. BCS ordered the Company to restore gas service if Mr. Ren paid the reconnection fee and a security deposit, which sum total was \$269.21.

On March 14, 2016, the Complainant attempted to pay \$269.21 to restore gas service but the Appellant/Respondent refused to accept the payment.

On March 23, 2016, the Appellant/Respondent filed a notice with intent to appeal the BCS determination at Case No. 3412240.

On April 14, 2016, the Appellee/Complainant filed a formal complaint (Complaint1) with the Pennsylvania Public Utility Commission (PUC or Commission) against PGW, which was docketed at C-2016-2540645. In Complaint1 at Docket No. C-2016-2540645, the Appellee/Complainant alleged that PGW terminated gas service due to alleged tampering by

a renter at the service address. The Appellee/Complainant also alleged that PGW sent incorrect bills for the time that the tenant resided at the service address.

On April 21, 2016, Appellant/Respondent filed a formal complaint (Complaint2) with the Commission against Appellee/Complainant, which was docketed at F-2016-2545083. PGW alleged that it properly determined that Mr. Ren tampered with the gas meter at the service address, and therefore, he is responsible and properly billed for bypass charges from November 29, 2011, to February 4, 2016, in the amount of \$3,286.75. PGW alleged that the BCS did not receive a full explanation of the facts. PGW requested a *de novo* review of the facts in Complaint2.

On May 9, 2016, PGW filed an Answer to Complaint1 at Docket No. C-2016-2540645 averring that the formal complaint was actually an Answer to its Complaint2 at Docket No. F-2016-2545083. PGW adjusted the amount of the bypass charges to \$3,075.37, which reflected usage of gas at the service address from January 4, 2012 to February 4, 2016.

Mr. Ren did not file an Answer to Complaint2.

A Hearing Notice dated May 17, 2016, scheduled an Initial Call-in Telephonic Hearing for June 17, 2016, at 10 a.m. Administrative Law Judge (ALJ) Katrina L. Dunderdale was assigned as the presiding officer from the Commission's Pittsburgh regional office.

On June 1, 2016, ALJ Dunderdale issued a Prehearing Order which reminded the parties of the date, time and place of the telephonic hearing and the procedural rules of the telephonic hearing.

On June 3, 2016, a friend authorized by Mr. Ren contacted the Commission and requested a Mandarin Chinese interpreter to help Mr. Ren participate in the telephonic hearing.

On June 6, 2016, the Appellant/Respondent filed a Motion to Consolidate Complaint1 and Complaint2 (Motion). The Motion also requested that the hearing be

rescheduled to a future date and be in-person at the Commission's Philadelphia regional office. The Motion stated that the Appellee/Complainant was in agreement.

By Interim Order #1 dated June 9, 2016, ALJ Dunderdale found it reasonable to grant the Motion. Therefore, Complaint1 and Complaint2 were consolidated, the hearing was rescheduled to an in-person hearing, and the hearing was scheduled to occur in Philadelphia.

By Hearing Notice dated June 13, 2016, the hearing was rescheduled for July 21, 2016, in Philadelphia with ALJ Cynthia W. Fordham as the presiding officer.

The Appellee/Complainant requested that the July 21, 2016, hearing be rescheduled because he would be in China from July 7, 2016, to August 28, 2016. Counsel for the Appellant/Respondent did not object to this request.

The request to reschedule the July 21, 2016 hearing was granted. By Hearing Notice dated July 12, 2016, the hearing was rescheduled to Monday, October 3, 2016, at 10:00 a.m.

On October 3, 2016, the hearing convened as scheduled. The Appellee/Complainant was present and represented himself; however, he was assisted by an interpreter of Mandarin Chinese. The Appellee/Complainant offered one exhibit, a lease for the service address, which was identified as Complainant Exhibit 1.² The Appellant/Respondent was represented by Laureto Farinas, Esquire and sponsored the following exhibits:

- (1) Account contacts – PGW Exhibit 1;
- (2) Account statement – PGW Exhibit 2;
- (3) Calculation of theft of service – PGW Exhibit 3; and
- (4) BCS Case No. 3412240 Decision – PGW Exhibit 4.

All PGW exhibits except PGW Exhibit 3 were submitted into evidence. The Appellant/Respondent presented two witnesses, Jessica Glace and Brandon Cooper.

² Complainant Exhibit 1 was not admitted into evidence during the October 3, 2016 hearing.

The Appellee/Complainant gave testimony regarding a tenant at the service address performing illegal activity, which resulted in a raid of the house. Through a search of the Internet, the Appellant/Respondent's witness confirmed the raid of the service address. The Appellant/Respondent requested time to recalculate what the Company had assessed as the amount due for alleged theft of gas service at the service address. ALJ Fordham granted the Appellant/Respondent's request to recalculate any amount that may be due and to pursue an agreement to the dispute. Tr. 66-67.

By Prehearing Order dated November 23, 2016, ALJ Fordham provided procedure for: (1) the Appellant/Respondent to provide to the Appellee/Complainant recalculation for any amount owed for gas service, (2) the Appellee/Complainant's possible request for a further hearing, (3) the Appellant/Respondent's possible amendment of the account statement, and (4) both parties' status report.

By Prehearing Order dated January 20, 2017, ALJ Fordham did the following:

- (1) confirmed that she received a request from the Appellee/Complainant for a further hearing in compliance with the November 23, 2016 Prehearing Order;
- (2) noted that the account statement for the service address needed to contain information from November 2011 through October 2013; and
- (3) acknowledged the Appellee/Complainant's change of address.

By Hearing Notice dated January 25, 2017, a further hearing was scheduled for March 2, 2017. Although the further hearing date did not change, by Hearing Notice dated February 17, 2017, the presiding officer was changed to the undersigned.³

The further hearing convened as scheduled. The Appellee/Complainant was present and represented himself. The Appellee/Complainant was assisted by an interpreter of Mandarin Chinese and was accompanied by his wife, Yun Lin. Mr. Farinas was present

³ ALJ Fordham retired from the Commission prior to the date of the scheduled further hearing.

representing the Appellant/Respondent and was accompanied by one witness, Tiffany Jones. The Appellee/Complainant sponsored the following exhibits:

- (1) Lease – Complainant Exhibit 1;
- (2) Payment and hospital records – Complainant Exhibit 2; and
- (3) Rental management contract – Complainant Exhibit 3

All three exhibits were admitted into the record without objection.

The Appellant/Respondent sponsored a PGW Exhibit 3 revised, which contained a revised calculation and revised account statement. PGW Exhibit 3 revised was admitted over the objection of the Appellee/Complainant.

The Appellant/Respondent requested time to again revise the calculation of any amount due for gas service based on Complainant Exhibit 2 regarding the payments and hospital records. The undersigned granted the request by the Appellant/Respondent and advised that instruction on examination and admission of the revised calculation would be provided by Order.

On March 3, 2017, the undersigned issued an Order providing the procedure for examination and possible request for further hearing regarding the revised calculation of any amount due for gas usage by the Appellee/Complainant at the service address. In compliance with the March 3, 2017 Order, the Appellee/Complainant requested a further hearing. By Order dated March 17, 2017 the request for a further hearing was granted.

By Hearing Notice dated March 20, 2017, a further hearing was scheduled for May 10, 2017.

The further hearing convened as scheduled. The Appellee/Complainant was present and represented himself. The Appellee/Complainant was assisted by an interpreter of Mandarin Chinese and the Appellee/Complainant was accompanied by his wife. The Appellant/Respondent was represented by Mr. Farinas who was accompanied by Ms. Jones. Ms. Jones testified to support what was identified as PGW Exhibit 5A, which was a re-

calculation of the amount due for gas usage by the Appellee/Complainant at the service address. PGW Exhibit 5A was admitted over the objection of the Appellee/Complainant.

The complete transcript was received on June 16, 2017, and consisted of 164 pages of transcribed testimony. The record closed on June 16, 2017, when the transcript was received. This matter is now ripe for decision.

FINDINGS OF FACT

1. The Appellant/Respondent is Philadelphia Gas Work, a utility that provides gas service in the city of Philadelphia and is under the jurisdiction of the Commission.

2. The Appellee/Complainant is Guan Hui Ren who is the owner of the service address and a customer of PGW. Tr. 48.

3. The Appellee/Complainant opened the account at the service address on August 4, 2009. Tr. 17-18, PGW Exhibit 1.

4. The Appellee/Complainant bought the service address in August 2009, with him, his wife, two daughters and his mother or a household of three adults and two children living in it. Tr. 102, Complainant Exhibit 2.

5. The Appellee/Complainant, his wife and two daughters moved out of the service address in June 2011, but Appellee/Complainant's sister moved in to take care of her mother. Tr. 102-03.

6. On February 25, 2012, the Appellee/Complainant's mother had an accident and was hospitalized, and then discharged February 28, 2012. Tr. 103, Complainant Exhibit 2.

7. On November 25, 2012, the Appellee/Complainant's mother was again hospitalized and was then discharged to a rehabilitation facility where she resided from December 6, 2012, to December 23, 2012. Tr. 104, Complainant Exhibit 2.

8. From December 6, 2012 through to February 5, 2013,⁴ no one resided at the service address. Tr. 105, Complainant Exhibit 2.

9. The Appellee/Complainant rented the service address on July 1, 2013 to two tenants, Adrian and Laura Pacheco. Tr. 49, 53-54, 106, Complainant Exhibit 1.

10. Although the Appellee/Complainant desired to have the tenants pay for all utilities in their name, the tenants made payment for the utility service with the property management company because the gas service was not in their names. Tr. 49-50, 60-61 110-11.

11. Yun Lin (Mrs. Ren) is the wife of the Appellee/Complainant and was responsible for paying the PGW gas bills for the service address. Tr. 123.

12. Mrs. Ren asked the property management company to put the gas bills in the tenants' name but that did not happen. Tr. 123.

13. PGW has no record of a request from the Appellee/Complainant to change the name of the account at the service address or to put the gas service in the name of a tenant. Tr. 18.

14. The Appellee/Complainant would pay for the PGW utility service at the service address and would then receive the payment from the tenant through the property management company for the billed gas service, which was put into Mr. Ren's account. Tr. 50.

⁴ Appellee/Complainant's mother passed away on February 5, 2013.

15. On October 2, 2015, the tenants were the subject of an illegal drug raid; however, the Appellee/Complainant was not directly informed by the police that conducted the raid. Tr. 51, 57, 65-66, 107, 111-12.

16. The FBI was involved in the drug raid, the door to the service address was broken into and the house was trashed. Tr. 51, 107.

17. After the raid, until about December 2015, the Appellee/Complainant concentrated on repairing the service address but the appliances were still on although no one lived in the house. Tr. 57-59, 112-116, Complainant Exhibit 3.

18. On February 4, 2016, a PGW technician, Brandon Cooper, was at the service address and found the electronic reading transmitter (ERT) sitting on top of the meter. Tr. 15, PGW Exhibit 1.

19. The PGW technician took a photograph of the meter, removed the meter from the service address and turned the gas service off because the meter was tampered with. Tr. 15-16, PGW Exhibit 1.

20. The PGW technician left a termination notice at the service address. Tr. 15-16, PGW Exhibit 1.

21. The service address had the following gas appliances with corresponding British Thermal Unit (BTU) values found on the nameplate of the corresponding appliance:

- a. house heater – 105,000 BTUs;
- b. water heater – 33,000 BTUs;
- c. range – 56,000; and
- d. dryer – 22,000. Tr. 16, 26-27, 40-41, PGW Exhibits 1, 3 revised.

22. A BTU is the measurement of how much energy a heating appliance uses based upon its capacity to burn energy, and therefore, it is a measurement of heating value for these heating appliances. Tr. 27.

23. The Appellant/Respondent uses the BTU of each gas appliance and the recommended effective full load hours (EFLH) for one year to determine the amount of time the appliance was used over a period of one year. Tr. 28.

24. The Appellant/Respondent used BTUs of the gas appliances rather than historical usage at the service address to determine the alleged unauthorized usage calculation. Tr. 155.

25. Estimated ccfs from the BTUs for each gas appliance for the period from July 1, 2013 to February 4, 2016, is as follows:

- a. house heater – 1,909.01 ccf;
- b. water heater – 248.24 ccf;
- c. range – 175.52 ccf; and
- d. dryer – 27.58 ccf
- e. grand total of 2,360 ccf ($1,909.01 + 248.24 + 175.52 + 27.58 = 2360.35$) Tr. 150, PGW Exhibit 5A.

26. On February 9, 2016, PGW charged the Appellee/Complainant for tampering with gas service from November 29, 2011 to February 4, 2016, in the amount of \$6,082.13 minus \$2,795.38, which is the amount the Appellee/Complainant paid over the same period for a total of \$3,286.75 ($\$6,082.13 - \$2,795.38 = \$3,286.75$). Tr. 16-17, PGW Exhibit 1.

27. On February 10, 2016, the Appellee/Complainant filed an informal complaint with the BCS at Case No. 3412240. Tr. 18, PGW Exhibit 1.

28. PGW's response to BCS Case No. 3412240 was that the Appellee/Complainant is responsible for the gas consumption at the service address from November 29, 2011 to February 4, 2016, and the amount due to restore gas service is \$3,555.96

(\$3,286.75 + \$123.23 (reconnection fee) + \$132.00 (security deposit) + \$13.98 (actual meter read from retrieved meter) = \$3,555.96). Tr. 19, PGW Exhibits 1, 4.

29. The BCS decision at Case No. 3412240 concluded that there was no evidence of a meter bypass at the service address, and therefore, found that Mr. Ren is not responsible for the billed amount of \$3,286.75. Tr. 29-30, PGW Exhibit 4.

30. The BCS decision at Case No. 3412240 concluded that Mr. Ren is to pay \$269.21 (\$123.23 (reconnection fee) + \$132.00 (security deposit) + \$13.98 (recorded meter usage) = \$269.21). Tr. 46, PGW Exhibit 4.

31. The Appellant/Respondent revised the start time for the period of unauthorized usage from November 29, 2011 to July 1, 2013, so that the revised period of unauthorized usage is from July 1, 2013 to February 4, 2016. Tr. 19-21, 84, 116-17, PGW Exhibits 2, 3 revised, 5A.

32. The Appellant/Respondent calculated the theft of service bill from July 1, 2013, through February 4, 2016 (using the total gas usage of 2,360 ccf) to be \$1,732.93, which is \$3,657.54 (revised amount for revised period of unauthorized usage) - \$1,924.61 (amount Appellee/Complainant paid over revised period) = \$1,732.93. Tr. 148-50, PGW Exhibit 5A.

33. Mrs. Ren directed the property management company to send the bills to her address when she moved to New Jersey so that the bills would be paid. Tr. 124.

34. After the raid, Mrs. Ren and her husband signed an agreement with a new property management company on December 3, 2015. Tr. 124, 126-27, Complainant Exhibit 3.

35. The renovations to the service address were made and completed before the property management agreement was signed. Tr. 127.

36. Payments for gas at the service address paid by Appellee/Complainant:

Mon./Yr.	2010	2011	2012	2013	2014	2015	2016
Jan.	\$121.70	\$214.28	\$36.09	\$22.22	\$215.75	\$233.32	\$12.60
Feb.	\$216.19	\$276.83	\$193.06	\$20.76*	\$339.37	\$92.92	\$13.98
Mar.	\$230.30	\$209.07	\$174.43	\$41.27	\$290.49	\$12.27	
Apr.	\$112.92	\$112.18	\$61.83	\$21.23	\$217.19	\$33.04	
May	\$63.40	\$79.85	\$32.93	\$22.77	\$75.15	\$12.25	
Jun.	\$50.12	\$57.95°	\$31.53	\$21.23	\$23.29	\$12.25	
Jul.	\$39.08	\$46.45	\$25.58	\$20.98^	\$21.50	\$12.25	
Aug.	\$38.86	\$43.24	\$24.21+	\$22.96	\$23.44	\$15.86	
Sep.	\$35.89	\$36.99	\$24.21	\$21.48	\$21.93	\$19.49	
Oct.	\$42.07	\$30.36	\$26.01	\$21.08	\$21.29	\$25.60#	
Nov.	\$46.27	\$28.77	\$32.79	\$22.63	\$21.20	\$12.60	
Dec.	\$68.31	\$36.38	\$23.25	\$22.56	\$22.62	\$12.60	
Total	\$1,065.11	\$1,172.35	\$685.92	\$281.17	\$1,293.22	\$494.45	\$26.58

° Ren's moved to NJ; + Mother hospitalized; * Mother passed away; ^ Rented service address; # Raid at service address. Tr.130-33, Complainant Exhibit 2.

37. The Appellee/Complainant had control of the service address after the raid. Tr. 134-35.

38. The usage in ccfs at the service address from October 2013 to February 4, 2016 is as follows:

Mon./Yr.	2013	2014	2015	2016
Jan.		143	150	0
Feb.		241	59	0
Mar.		203	0	
Apr.		144	17	
May		42	0	
Jun.		7	0	
Jul.		6	0	
Aug.		7	0	
Sep.		6	3	
Oct.	6	6	6#	
Nov.	7	6	10	
Dec.	7	7	0	
Total	20	818	245	0

Raid at service address. PGW Exhibit 2.

39. Two tenants of the Appellee/Complainant were living at the service address during the majority of the period from July 1, 2013, to February 4, 2016, which is when the unauthorized usage is alleged. Tr. 157.

40. On February 4, 2016, PGW terminated gas service at the service address. Tr. 88, PGW Exhibit 3 revised.

41. Brandon Cooper is employed by PGW as a field service technician responsible for turning on gas service, terminating gas service and meter exchanges. Tr. 35-36.

42. On February 4, 2016, Mr. Cooper found the ERT (encoder receiver transmitter) on top of the meter; however, it does not belong there. Tr. 36-38, 87, PGW Exhibit 3 revised.

43. The ERT properly belongs directly on the face of the meter. Tr. 38.

44. For the ERT to be out of its proper position, someone would have to remove the security caps and four screws. Tr. 38, PGW Exhibit 3 revised.

45. The ERT in the position found by Mr. Cooper stops the meter from transmitting the gas used. Tr. 39.

46. Mr. Cooper concluded that the meter had been tampered with because there were months with absolutely no usage yet there were gas appliances attached to the fuel line. Tr. 37.

47. It is the position of the Appellant/Respondent that the Appellee/Complainant had possession and control of the service address to clean and renovate it after the unauthorized usage was established. Tr. 88-90, PGW Exhibit 3 revised.

48. The Appellee/Complainant has not had any other tenants since the raid because he has been unsuccessful in resolving the condition of no gas service at the service address. Tr. 55.

49. Jessica Glace is employed by PGW as a customer review officer and reviewed Complaint1 and Complaint2. Tr. 10-11.

50. Tiffany Jones is employed by PGW as a senior customer review office and investigated Complaint1 and Complaint2. Tr. 79-80.

DISCUSSION

I. Applicable Legal Standard

A. Complaint1

As the proponent of a rule or order or seeking affirmative relief from the Commission, Mr. Ren in this proceeding bears 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, Mr. Ren must demonstrate that PGW terminated service at the service address in error and sent incorrect billing for gas usage at the service address as 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 Mr. Ren presents evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of Mr. Ren shifts to PGW. If the evidence presented by PGW is of co-equal weight, Mr. Ren has not satisfied his burden of proof. Mr. Ren would be required to provide additional evidence to rebut the evidence of PGW. *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).

B. Complaint2

In Complaint2 PGW is the proponent seeking affirmative relief from the Commission. PGW is seeking relief from the informal complaint ruling by BCS that there was no unauthorized usage by Mr. Ren, and therefore, Mr. Ren is responsible only for a reconnection fee, security deposit and recorded usage on the meter, which amount tot \$269.21. Thus, regarding Complaint2, PGW bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a); see also 52 Pa.Code § 56.173(f)(the burden of proof remains with the party who filed the formal complaint). In most formal complaints, the consumer of the utility bears the burden of proof. However, where the utility filed a complaint requesting review by the Commission, the utility bears the burden of proof. See, *Knisely v. Columbia Gas*, Docket No. C-2013-2382327 (Final Order entered November 7, 2014).

The standard of review is a preponderance of the evidence as stated above. See *supra* at 14. The decision must be supported by substantial evidence and the burden of persuasion may shift as described above regarding Complaint1. See *supra* at 14.

In summary, the rules of burden, review and persuasion do not change. However, the characters to the formal complaint at issue have changed. PGW is the proponent for Complaint2 whereas it was not for Complaint1. Thus, PGW takes on the responsibilities that Mr. Ren had in Complaint1 in its filed Complaint2 because PGW filed Complaint2.

II. Incorrect Charges

A. Whether there was a tampered meter at the service address

52 Pa.Code § 56.2 defines unauthorized use of service as follows:

Unauthorized use of utility service—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 witness for the Appellant/Respondent, Mr. Cooper, testified that on February 4, 2016 he was at the service address and found the ERT out of place on top of the meter head. Tr. 36-38, PGW Exhibit 3 revised. Mr. Cooper also testified that there were months previous to the discovery of the meter on February 4, 2016, where the service address had zero usage. Tr. 37. The Appellee/Complainant, Mr. Ren, does not dispute the discoveries of Mr. Cooper.

I find the testimony of Mr. Cooper logical and credible. Because the record shows there was zero usage of gas service at the service address prior to the discovery of the tampered meter, I believe that the meter was tampered with prior to February 4, 2016, when the ERT was discovered in an improper position. Because I find that there was a tampered meter at the service address, it must be determined how long that tampered meter existed at the service

address to calculate the period of unauthorized usage (inaccurate measurement because of a faulty meter) of gas.

B. Whether the tampered meter resulted in unauthorized usage

The Appellant/Respondent had initially determined that the tampered meter existed at the service address from November 29, 2011 to February 4, 2016. Tr. 17. The Appellee/Complainant provided credible testimony that his mother lived in the service address after he and his family moved out in June 2011. Tr. 102-03. The Appellee/Complainant also provided documentation that his mother was hospitalized or in a rehabilitation facility for most of the time between June 2011 and February 5, 2013. Complainant Exhibit 2. Based on the testimony and documents provided by the Appellee/Complainant, the Appellant/Respondent revised the allegation of unauthorized usage of gas at the service address to the period from July 1, 2013 to February 4, 2016. July 1, 2013 is when the tenants of the Appellee/Complainant began to rent the service address. Tr. 147-48, PGW Exhibit 5A.

The Appellant/Respondent does not provide any usage corresponding to the revised start of the unauthorized usage of gas, July 1, 2013. Rather, the usage evidence provided by the Appellant/Respondent starts on October 1, 2013. The Appellant/Respondent does not provide any reasoning why unauthorized usage should start on October 1, 2013, other than it is when the tenants took possession of the service address and the tenants took part in illegal activity which caused the FBI raid. The unspoken assumption is that because the tenants took part in illegal activity that caused the raid, it is possible they took part in unlawful activity of unauthorized usage of gas. Even if that assumption were proven by the record, which it is not, it does not support that the tenants started the unlawful activity at the beginning of their lease.

In contrast, the Appellee/Complainant provided payment data from January 2010 through February 4, 2016. It is noted that from June 2011 through July 2012, two adults were living at the service address, Appellee/Complainant's mother and sister.⁵ Tr. 59, 62, 102-03.

⁵ This period is before the hospitalization and rehabilitation of the mother were there may not have been two persons living consistently.

Throughout the tenancy of the Pachecos two adults were living at the service address, Adrian and Laura Pacheco. Complainant Exhibit 2. It is reasonable to compare these periods for bills and usage.

I do not see any compelling record evidence that the unauthorized usage of gas service started with the tenants' possession of the service address. To the contrary, in viewing the historical data, the usage and corresponding amounts paid seem to be comparable to other years until February 2015. It is noted that the evidence provided by the Appellant/Respondent lacks data to show the usage at the start of what the Company has alleged is the unauthorized usage period. Without the usage data as record evidence, it is difficult to corroborate the Company's allegation. The preponderance of the evidence does not support the allegation by the Appellant/Respondent that the unauthorized usage of gas at the service address began on July 1, 2013. Consequently, the Appellant/Respondent's allegation that the period of unauthorized usage began on July 1, 2013 must fail.

I note that the Appellee/Complainant's own evidence of payment supports a stark contrast of payment pattern starting with the February 2015 bill, see chart below.

Mon./Yr.	2010	2011	2012	2013	2014	2015	2016
Jan.	\$121.70	\$214.28	\$36.09	\$22.22	\$215.75	\$233.32	\$12.60
Feb.	\$216.19	\$276.83	\$193.06	\$20.76*	\$339.37	\$92.92	\$13.98
Mar.	\$230.30	\$209.07	\$174.43	\$41.27	\$290.49	\$12.27	
Apr.	\$112.92	\$112.18	\$61.83	\$21.23	\$217.19	\$33.04	
May	\$63.40	\$79.85	\$32.93	\$22.77	\$75.15	\$12.25	
Jun.	\$50.12	\$57.95°	\$31.53	\$21.23	\$23.29	\$12.25	
Jul.	\$39.08	\$46.45	\$25.58	\$20.98^	\$21.50	\$12.25	
Aug.	\$38.86	\$43.24	\$24.21+	\$22.96	\$23.44	\$15.86	
Sep.	\$35.89	\$36.99	\$24.21	\$21.48	\$21.93	\$19.49	
Oct.	\$42.07	\$30.36	\$26.01	\$21.08	\$21.29	\$25.60#	
Nov.	\$46.27	\$28.77	\$32.79	\$22.63	\$21.20	\$12.60	
Dec.	\$68.31	\$36.38	\$23.25	\$22.56	\$22.62	\$12.60	
Total	\$1,065.11	\$1,172.35	\$685.92	\$281.17	\$1,293.22	\$494.45	\$26.58

° Ren's moved to NJ; + Mother hospitalized; * Mother passed away; ^ Rented service address; # Raid at service address. Tr.130-33, Complainant Exhibit 2.

It is the Appellee/Complainant that picked the tenants for the service address. It is the Appellee/Complainant that took on the responsibility for the bill at the service address. Tr. 60-61, 123. Consequently, it is the Appellee/Complainant that is responsible for any unauthorized usage by a tampered meter at the service address. The record evidence supports unauthorized usage beginning February 2015.

C. Correct amount to be billed for unauthorized usage

It is noted that Appellee/Complainant disputed that there was a gas range at the service address. Mr. Ren testified that he remodeled the service address after he moved there in 2009 and used an electric cooking range. Tr. 42; see also, 56, 128, 134 (Mrs. Ren also testified to an electric cooking range and an electric dryer).

The witness for the Appellant/Respondent, Mr. Cooper, testified that he saw a gas range and a gas dryer at the service address on February 4, 2016. Tr. 40-41.

The Appellee/Complainant sponsored Complainant Exhibit 1 which is a lease of the service address. The lease was signed on July 1, 2013 after Mr. and Mrs. Ren moved out of the service address. On page three of the lease it indicates that one of the appliances included at the service address is a stove (or range). The lease does not indicate that a dryer is one of the appliances included in the lease. Further down on page three of the lease it indicates that the tenant pays for cooking gas. Thus, the Appellee/Complainant's own evidence refutes the testimony given by the witnesses for the Appellee/Complainant.

I find based on the record evidence that the testimony of Mr. Cooper is corroborated and credible. Therefore, I find that there were four gas appliances at the service address:

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

The Appellant/Respondent is directed to compute from February 2015 through February 4, 2016, the amount of ccfs for the following gas appliances at the service address:⁶

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

Once the amount is determined by the Appellant/Respondent for the gas usage from February 2015 through February 4, 2016, the amount the Appellee/Complainant is to pay to restore gas service can be calculated.

To restore gas service to the service address the Appellee/Complainant will be responsible to pay the amount computed for unauthorized use from February 2015 through February 4, 2016 plus \$269.21, which is the amount calculated to restore service (Tr. 46, PGW Exhibit 4) subtracted by \$277.71, which is the amount paid by the Appellee/Complainant from February 2015 to February 4, 2016 for gas service (Tr. 130-33, Complainant Exhibit 2).

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.

Pursuant to Commission regulation 52 Pa.Code § 56.98(a), upon discovering a tampered meter, the Appellant/Complainant acted appropriately by terminating service and billing the Complainant for service at the service address on February 4, 2016, after the discovery of the ERT improperly placed on the meter at the service address. Tr. 15-16, PGW Exhibit 1.

⁶ It is noted that the gas appliances for four years had a total amount of 3668 ccfs. Consequently, the gas appliances for one year should amount to 917 ccfs (3668ccfs/4 years = 917ccfs/year).

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. When a utility appeals an informal complaint, the utility is the proponent and bears the burden of proof. *Knisely v. Columbia Gas*, Docket No. C-2013-2382327 (Final Order entered November 7, 2014); see also, 52 Pa.Code § 56.173(f) the burden of proof remains with the party who filed the formal complaint).

4. The meter at the service address had been tampered with.

5. Unauthorized use of gas service occurred at the service address because of the tampered meter and recorded zero usage at the service address. 52 Pa.Code 56.2 (definition of unauthorized use).

6. The consequence of unauthorized usage is immediate termination of service, and therefore, the Appellant/Respondent acted properly by terminating service at the service address. 52 Pa.Code § 56.98(a).

7. The Appellant/Respondent had the burden of proof and sustained its burden regarding tampered meter and consequently unauthorized usage of gas at the service address. 66 Pa.C.S. § 332(a).

8. The Appellant/Respondent had the burden of proof regarding the charges which the evidence supported a modification of the relevant period for the charges of unauthorized usage.

9. The Appellee/Complainant had the burden of proof regarding termination of service in error at the service address and failed to sustain his burden of proof.

10. The Appellee/Complainant had the burden of proof regarding incorrect charges for gas usage at the service address and sustained his burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Philadelphia Gas Works against Guan Hui Ren at Docket No. F-2016-2545083 is sustained in part regarding the alleged tampering of a meter and is modified in part regarding the amount due for unauthorized usage.

2. That the formal Complaint filed by Guan Hui Ren against Philadelphia Gas Work at Docket No. C-2016-2540645 is denied in part regarding the dispute of a tampered meter and is sustained in part regarding incorrectly billed charges.

3. That the Appellant/Respondent, Philadelphia Gas Works, shall calculate for unauthorized usage from February 2015 to February 4, 2016, consistent with the content contained herein.

4. That the calculation in the above ordering paragraph three shall be reviewed and verified by the Pennsylvania Public Utility Commission's Bureau of Technical Utility Services for correctness.

