

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anwar Baghdadi	:	
	:	
v.	:	F-2016-2576632
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

This Initial Decision dismisses the complaint filed with the Pennsylvania Public Utility Commission by Anwar Baghdadi against Philadelphia Gas Works for failure to meet the burden of proof.

HISTORY OF THE PROCEEDING

On November 15, 2016, Anwar Baghdadi (Mr. Baghdadi or Complainant) filed a complaint with the Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which he alleged PGW terminated natural gas service to the service address. Complainant requested the Commission order PGW to reconnect natural gas service and provide him with a payment arrangement. On December 12, 2016, PGW filed an answer in which it admitted it terminated service on August 28, 2009 because a bypass at the meter resulted in the theft of natural gas.

On January 26, 2017, the Office of Administrative Law Judge scheduled an initial call-in telephonic hearing in this matter for Monday, March 6, 2017. On January 27, 2017, the presiding officer issued a Prehearing Order.

On March 6, 2017, the presiding officer convened the initial telephonic hearing as scheduled, at which Complainant appeared *pro se*, and Respondent appeared represented by Graciela Christlieb, Esquire. Complainant testified on his own behalf, in addition to offering the testimony of his wife, Renee Baghdadi. Complainant offered no exhibits. Attorney Christlieb presented the testimony of one witness and offered six exhibits, which were marked as PGW Exhibits 1 through 6 and admitted into evidence. Complainant and Respondent issued final statements on the hearing record in lieu of filing briefs.

On April 13, 2017, the court reporting service contacted the presiding officer and advised that the court reporter, who recorded the proceedings on March 6, 2017, had died on March 26, 2017. While transcribing the recording made by the court reporter, the transcriptionist found a gap existed in the recording. In addition, the court reporter's notes, hand-written by her at the time of the hearing, indicated the tape recorder stopped temporarily. The break in the recorded proceedings occurred on page 40 of the transcript at the start of the cross-examination of Respondent's witness by Complainant.

On April 19, 2017, the presiding officer received the transcript of the hearing, containing 48 pages.

On April 20, 2017, the presiding officer issued the First Interim Order which advised the parties the transcript did not reflect the entire cross-examination of Respondent's witness, Tiffany Jones. The presiding officer notified Mr. Baghdadi and PGW that the gap in the transcript could not be replaced due to the subsequent death of the court reporter. The presiding officer provided the parties with a copy of the surrounding pages in the transcript where the break in the recording occurred. The presiding officer then ordered the parties to notify her in writing if either party wanted to reconvene the hearing for the purpose of re-examining Ms. Jones with a court reporter present, in order to allow the record to reflect the whole of her testimony. Neither party submitted any request in writing or through any other form of communication.

The record consists of a 48-page transcript of the testimony from the March 6, 2017 hearing and the aforementioned six exhibits offered by PGW. The record was closed by Interim Order dated May 22, 2017.

FINDINGS OF FACT

1. Complainant, Anwar Baghdadi, resides at 2235 North Mole Street, Philadelphia, Pennsylvania 19132 (service address) with his wife. (Tr. 8).

2. The service address is a residential structure located in a row of attached houses which Complainant bought in 1996. (Tr. 8, 20-22).

3. Respondent, PGW, provided residential natural gas service at the service address from 1996 until June 21, 2016. (Tr. 32-37; PGW Exhibit 1).

4. On August 28, 2009, Respondent terminated natural gas service for the service address due to nonpayment. (Tr. 15, 34; PGW Exhibit 3).

5. During the 2010/2011 winter season, Complainant turned on the natural gas service at his meter when the weather turned cold because he feared his water pipes would freeze and break. (Tr. 16).

6. While investigating a suspected gas leak in the neighborhood on June 21, 2016, Respondent checked the curb valve for the service address and found the natural gas service was on when it was supposed to be off. (Tr. 35; PGW Exhibit 4).

7. On June 21, 2016, Respondent terminated natural gas service for the service address for the second time and locked the gas meter. (Tr. 21, 26, 34-37; PGW Exhibit 4).

8. On June 23, 2016, PGW visited the service address and found a meter bypass inside the service address. (Tr. 32-37; PGW Exhibits 4 & 5).

9. The service address requires natural gas service for cooking, heating and hot water. (Tr. 17, 37).

10. Complainant did not pay PGW for natural gas service from August 28, 2009 until June 21, 2016 because he never received a bill from PGW during that time. (Tr. 18; PGW Exhibits 1 & 4).

DISCUSSION

Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a), provides that the party seeking affirmative relief from the Commission has the burden of proof. Mr. Baghdadi is the party seeking affirmative relief from the Commission, and, therefore, has the burden of proof. Mr. Baghdadi has the duty to establish a fact by a preponderance of the evidence, and must show that PGW is responsible or accountable for the problem described in the complaint.¹ Additionally, care must be exercised to ensure the Commission's decision is supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.²

In the complaint, Mr. Baghdadi alleges PGW wrongly terminated service to the service address and now wrongly accuses him of tampering with the natural gas meter at the service address. As relief, he requests a payment arrangement for the balance PGW alleges is the natural gas used from 2009 to June 21, 2016. Mr. Baghdadi testified he had no recollection of stealing natural gas or how he could have been stealing it. Complainant contended PGW should

¹ Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950); Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976).

² See, e.g., Section 704 of the Administrative Agency Law, 2 Pa.C.S.A. § 704; Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwth 1984).

have told him from the start when he requested a payment arrangement that PGW was charging him for natural gas that was used in his home previously. Mr. Baghdadi argued that if he was using natural gas, PGW should have been sending him monthly bills. Mr. Baghdadi claimed the natural gas was used in the other side of the rowhouse.

Respondent's witness, a senior customer review officer, testified PGW determined Complainant is not eligible for a payment arrangement because the unpaid balance resulted from a theft of service. The witness also testified that the balance Complainant owes (\$12,214.36) includes only the cost of the stolen natural gas and does not include any unpaid balance prior to 2009. PGW contended Complainant benefitted from the natural gas and first should be required to pay for the natural gas stolen from 2009 to 2016 before natural gas service will resume. PGW pointed out that the burden of proof is upon Complainant, and he failed to prove he is entitled to a payment arrangement for the stolen natural gas.

Complainant failed to prove Respondent violated the Public Utility Code (the Code), 66 Pa.C.S.A. § 101 *et seq.*, the Commission's regulations or any Commission Order. PGW was permitted to terminate natural gas service immediately when it discovered evidence the customer tampered with its meter. Pursuant to 52 Pa.Code § 56.98(3) and (4), "[a] public utility may immediately terminate service for ... (3) [t]ampering with meters or other public utility's equipment. (4) [v]iolating tariff provisions on file with the commission so as to endanger the safety of a person or the integrity of the public utility's delivery system."

Mr. Baghdadi admitted in his testimony he turned on the natural gas at the meter. Accordingly, Complainant's testimony – that he did not know anything about the alleged theft of natural gas service – was not accepted as credible. He knew he turned the gas service back on, he knew he was using natural gas in his residence for warmth, to cook food and to have hot water, and he knew he was not receiving monthly bills from PGW for the natural gas he was using.

PGW discovered clear signs of meter tampering at the service address and acted in accordance with the applicable regulation at 52 Pa.Code § 56.98. PGW's employees observed

the curb valve was in the “on” position, and two days later entered the premises and found a bypass inside the service address.

Accordingly, Complainant owes Respondent for the unbilled natural gas consumption from August 28, 2009 to June 21, 2016. Before natural gas service can resume at the service address, Complainant must pay for the unbilled service. Mr. Baghdadi is not entitled to a payment arrangement because he incurred the unpaid balance by tampering with the meter and knowingly used natural gas he did not pay to use. Insert citation Respondent acted consistent with the regulations when it terminated service on June 21, 2016 and required Complainant to pay for the natural gas service which he used from August 28, 2009 to June 21, 2016.

Normally, the provisions of 52 Pa.Code § 56.35(a) permit a utility to require, as a condition before providing service, a payment for any outstanding unpaid bills on a residential account which unpaid balance accrued within the past four years. The four-year limit does not apply if the unpaid balance resulted from fraud or theft by the applicant pursuant to 52 Pa.Code § 56.35(b)(1). PGW was permitted to require Complainant to pay the unpaid balance for the natural gas service which Mr. Baghdadi used during the seven-year period at issue.

PGW claimed the amount Mr. Baghdadi owed PGW in unbilled natural gas service totaled \$12,214.36. However, PGW provided no evidence to prove that amount is correct. PGW provided no evidence how it calculated that amount, including what rates were applicable during the time period. PGW also did not provide any evidence concerning the consumption amount. PGW claimed the putative amount was limited to only the cost of the natural gas consumed from August 28, 2009 to June 21, 2016 but did not explain if the unpaid balance - that prompted the termination for non-payment in 2009 - had been reduced to a zero balance. Lastly, PGW provided no evidence it had billed Complainant for the unpaid natural gas service or when it might have sent a bill to Complainant requesting the specific payment, as required by 52 Pa.Code § 56.98(b).

PGW will have to calculate that amount and provide a detailed statement to Complainant which shows the amount of natural gas consumed, how that consumption amount

was calculated, what natural gas cost rates (both distribution and supply costs) were in effect over the disputed time period (excluding any late fees), and how PGW calculated the other costs which should have been paid by Mr. Baghdadi if he had been billed at the time of service.

Accordingly, the formal complaint is dismissed in the ordering paragraphs to follow for failure to meet the burden of proof that Complainant is entitled to a payment arrangement for the unbilled service which accrued.

CONCLUSIONS OF LAW

1. The parties to and subject matter of this complaint proceeding are properly before the Commission. 66 Pa.C.S.A. § 701.
2. Anwar Baghdadi, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S.A. § 332(a).
3. Anwar Baghdadi failed to meet his burden of proof. 66 Pa.C.S.A. §332(a).
4. Philadelphia Gas Works was correct to terminate natural gas service on June 21, 2016 without prior notice. 66 Pa.C.S.A. § 1501, and 52 Pa.Code § 56.98 (3) and (4).
5. Philadelphia Gas Works was correct to require Complainant to pay for the unbilled natural gas used between August 28, 2009 and June 21, 2016 before natural gas service may resume at the service address. 52 Pa.Code § 56.35.

