

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher L. Bretz	:	
	:	
v.	:	F-2016-2543880
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

This Initial Decision sustains the portion of Christopher L. Bretz' formal Complaint against Philadelphia Gas Works, Docket No. F-2016-2543880 concerning unauthorized usage charges for the period February 23, 2009 through August 31, 2015, and denies the portion of the Complaint concerning unauthorized usage charges for the period September 1, 2015, through April 5, 2016.

HISTORY OF THE PROCEEDING

On May 4, 2016, Christopher L. Bretz (Complainant) filed a formal Complaint against (Respondent or PGW), at Docket No. F-2016-2543880. In his Complaint, Mr. Bretz alleged that PGW has already shut off his gas service. He explained that he and his stepfather had purchased the Service Address as an investment property in February of 2009. Mr. Bretz averred that he finished the gas line installation to the furnace in the fall of 2015 and discovered that gas service was already present at the property. He stated that he had at first assumed that his stepfather had had the gas service turned on only to be informed by PGW that that was not the case.

As relief, Mr. Bretz requested that the Commission order PGW to calculate the bill for unauthorized gas usage to cover only the period from January 2016 to April 2016, and establish a payment arrangement on his behalf.

The Complaint is a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision at BCS No. 3425304, which denied the Complainant's informal complaint.

On May 26, 2016, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated June 14, 2016, notified the parties that an initial hearing was scheduled for Wednesday, July 13, 2016, at 10:00 a.m.

A Prehearing Order was issued on June 17, 2016, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on July 13, 2016. Mr. Bretz appeared *pro se* and testified in support of the Complaint. Mr. Bretz sponsored four exhibits which were admitted into the record. Tr. 108. Laureto Farinas, Esq. represented the Respondent, and presented the testimonies of Adrian Crawford, John Yoak, and Timothy Sullivan. The Respondent sponsored six exhibits which were admitted into the record. Tr. 108.

Because at the hearing, Mr. Bretz presented himself both as the owner of the Service Address, and at times as just a guest residing there with his stepfather's permission, I concluded that the Complaint could not be resolved without the participation of his stepfather, Leslie Goss. Tr. 31. It was agreed that Mr. Bretz and PGW would complete their respective cases in chief and cross examination of opposing witnesses, and that a further hearing would be scheduled after Mr. Goss was joined as an indispensable party. Tr. 23-26.

By Order dated January 10, 2017, I reversed my ruling on joining Mr. Goss as an indispensable party and explained that no further hearings will be held in this matter. Mr. Bretz was offered an opportunity to file any additional documentation regarding his prior addresses by no later than January 31, 2017. In turn, PGW could submit written objection to any late-filed exhibits submitted by the Complainant by no later than February 14, 2017.

The Complainant did not file any late-filed exhibits. The record in this matter closed on February 14, 2017.

FINDINGS OF FACT

1. The Complainant is Christopher L. Bretz, who resides at 2717 Salmon Street, Philadelphia, Pa 19134 (Service Address).
2. The Respondent is Philadelphia Gas Works.
3. On October 5, 2005, PGW shut off gas service at the Service Address due to nonpayment by the then occupant of the property. Tr. 51, 61.
4. The Service Address was unoccupied during the period 2008 and 2009. Tr. 57.
5. Until April 5, 2016, the Service Address was served by PGW's gas Meter # 18544364. Tr. 73-74, PGW Exhibits 2 and 3.
6. In March 2009, Complainant's stepfather, Leslie Goss, bought the Service Address at a Sheriff's Sale for \$80,000. Tr. 9, 11, Complainant Exhibit D.
7. The property was uninhabitable as the entire back of it had to be rebuilt. Tr. 12, Complainant Exhibit D.

8. Mr. Bretz and Mr. Goss started repair work at the Service Address in March of 2009 but soon ran out of funds. Tr. 12.

9. The work at the Service Address began anew in 2015 with the installation of a new heating system and an air conditioning system. Tr. 12-13, 21, Complainant Exhibit A.

10. Mr. Bretz has a background as a handyman and is doing most of the renovations at the Service Address himself. Tr. 13, 17.

11. Mr. Bretz laid down gas pipes at the Service Address by himself. Complainant Exhibit B, Tr. 14.

12. Sometime in the fall of 2015, Mr. Bretz connected the gas pipes to PGW's gas meter and turned on gas service at the valve. Tr. 14.

13. Mr. Bretz did not contact PGW to turn on gas service at the Service Address or to put gas service in his name. Tr. 14.

14. In January 2016, Mr. Bretz moved into the Service Address in order to speed up the repair work. Tr. 13, 20-21, Complainant Exhibit B.

15. On April 5, 2016, a PGW field service technician, John Yoak, visited the Service Address on an unbilled usage gas tip. Tr. 47, PGW Exhibit 1.

16. Mr. Yoak found gas on at the curb valve. Tr. 77-78.

17. Mr. Yoak also found gas on at the meter with a 5% natural flow in the fuel line. Tr. 64, 70, 73, PGW Exhibit 2.

18. The red caps were missing from Meter # 18544364 serving the Service Address. Tr. 64-65, PGW Exhibit 2.

19. The red caps on a PGW meter function as a seal, covering the screws that connect the ERT head to the rest of the meter. Tr. 64-65.

20. If the ERT head is removed, the meter cannot record or report gas usage. Tr. 65, 72.

21. Removing the ERT will allow gas to flow through the meter unregistered. Tr. 51-52.

22. The red caps do not come off by themselves. They must be pried out with force. Tr. 65-66.

23. Mr. Yoak found the following gas appliances at the property: a 69,000 BTU house heater; a 150,000 BTU hot water heater; and a 22,000 BTU dryer. Tr. 52, 71, PGW Exhibit 3.

24. Mr. Yoak concluded his field visit by turning the gas valve off inside the Service Address and removing Meter # 18544364 from the property at index 1769. Tr. 73-74, PGW Exhibits 2 and 3.

25. Tamper counts consist of tilt counts and magnetic counts which are set when the meter is installed at a property. Tr. 84.

26. The tamper count remains unchanged unless the meter is tampered with. Tr. 84, 92.

27. The tilt count changes every time that the ERT and index are tilted in excess of 60 degrees. Tr. 85.

28. Every time the Automatic Meter Reading (AMR) device comes in close proximity of a strong magnetic field, a switch is lifted inside the meter, stopping the AMR portion of the meter from recording and changing the magnetic count in the meter. Tr. 85.

29. PGW gathers tamper count information through the AMR and the ERT that is on the meter. Tr. 85.

30. PGW's meters report the tamper counts every month. Tr. 99.

31. The Company has only been able to gain access to the tamper count information in the last three years. Tr. 98-100.

32. The tamper counts recorded by Meter # 18544364 from the time it was installed at the Service Address to April 5, 2016 consisted of 100 tilt counts and six magnetic counts. Tr. 71, 95, PGW Exhibit 2.

33. 18 of the tilt counts and five of the magnetic counts were recorded during the period March 2009, to April 2016. PGW Exhibit 4, see also Tr. 84-87, 93.

34. On April 6, 2016, Mr. Bretz contacted PGW seeking to establish service at the service address. Tr. 47-48. PGW Exhibit 1.

35. Mr. Bretz informed PGW that he took ownership of the Service Address on February 23, 2009. Tr. 48.

36. On April 7, 2016, PGW's Revenue Protection Unit provided Mr. Bretz with the terms for the restoration of service at the Service Address, which included the charge of \$18,893.75 for the unauthorized usage of 12,009 CCF of gas during the period February 23, 2009 to April 5, 2016, a security deposit in the amount of \$204.00 in, as well as a reconnection fee of \$123.00. Tr. 48.

37. The charge of \$18,893.75 was based on historical usage at the property during the period April 26, 2002 through March 28, 2003. Tr. 48, 53, 55-57.

DISCUSSION

In his Complaint, Mr. Bretz alleged that PGW has already shut off his gas service. He stated that he and his stepfather had purchased the Service Address as an investment property in February of 2009. Mr. Bretz averred that he finished the gas line installation to the furnace in the fall of 2015 and discovered that gas service was already present at the property. He stated that he had at first assumed that his stepfather had had the gas service turned on only to be informed by PGW that that was not the case. As relief, Mr. Bretz requested that the Commission order PGW to recalculate the bill for unauthorized gas usage to cover only the period from January 2016 to April 2016, and establish a payment arrangement on his behalf.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990) *alloc. den.*, 602 A.2d 863 (Pa.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.1980).

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 her 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*, 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).

At the hearing Mr. Bretz testified that his stepfather, Leslie Goss, bought the Service Address at a Sheriff's Sale in March 2009 for \$80,000. Tr. 9, 11, Complainant Exhibit D. The property was in bad disrepair but seemed like a good investment opportunity. The property was uninhabitable as the entire back of it had to be rebuilt. Tr. 12, Complainant Exhibit D. Mr. Bretz and Mr. Goss started working on the property in March of 2009 but soon ran out of money and the work remained unfinished for five years. Tr. 12. The work began anew in 2015 with the new heating system and air conditioning system being installed. Tr. 12-13, 21, Complainant Exhibit A. In support of his statements, Mr. Bretz produced numerous receipts for parts related to heating and air conditioning systems dated from April 2015 to March 2016. Complainant Exhibit A, see also Tr. 14.

Mr. Bretz testified that he has a background as a handyman and that he is doing most of the renovations himself. Tr. 13, 17. According to Mr. Bretz, no one lived at the Service Address between March 2009 and January 2016, when he moved into the property in order to speed up the repair work. Tr. 13, 20-21, Complainant Exhibit B. In support of his statement, he produced a copy of his Driver's License still bearing a Bernville, PA address, and copies of mail envelopes dated February 2016 and March 2016 bearing the forward address sticker from the postal service. Complainant Exhibit C.

With regard to the gas meter serving the Service Address, Mr. Bretz testified that the gas meter was located near the ceiling in the basement of the Service Address. Tr. 18. He said that initially the meter was connected to only about four feet of pipe which ended at a union

joint. Tr. 18. At the time, Mr. Bretz surmised that whoever cleaned and sealed the property prior to the Sheriff's Sale had disconnected the gas pipes at the union point. Tr. 18. According to Mr. Bretz, when they first purchased the Service Address, they found no hot water heater and no furnace at the property. Tr. 17. What gas pipes were in the property were in poor shape and not connected to anything. Tr. 31. He testified that he laid down the new gas pipes himself and produced receipts dated February 2016 for the purchase of approximately 90 feet of black iron pipes and black iron fittings which are used for gas lines. Complainant Exhibit B, Tr. 14. During his direct testimony, Mr. Bretz addressed PGW's meter tampering allegations by testifying that "the gas was actually on inside the property, the main shutoff valve was turned off. Initially, we turned it on, discovered that there was gas there and connected the pipes to the meter." Tr. 14. He admits that he should have contacted PGW in order to establish service in his name. Tr. 14.

According to Mr. Bretz, a PGW technician visited the property on April 5, 2016, to change out the meter and to perform a safety check. The technician removed the meter and advised Mr. Bretz to contact the Company to discuss the matter with them. Tr. 8. When Mr. Bretz contacted PGW, he was informed of the Company's finding of theft of service at the Service Address and of a charge of approximately \$19,000.00 for the unauthorized use of gas. Tr. 9.

In response to Mr. Bretz' testimony, PGW put forth the testimonies of Ms. Crawford, Mr. Yoak, and Mr. Sullivan. Ms. Crawford testified as a customer review officer for PGW, in charge of investigating customer complaints. Tr. 40. She stated that on October 5, 2005, PGW had shut off gas service at the property due to nonpayment by a prior occupant of the Service Address. Tr. 51, 61. The Service Address was unoccupied during the period 2008 and 2009. Tr. 57. On April 5, 2016, PGW received an unbilled usage gas tip regarding the Service Address. Tr. 47, PGW Exhibit 1. Also on April 5, 2016, a PGW technician visited the service address and found the gas service on. The technician removed the meter and turned the gas service off at the property. *Id.*

On April 6, 2016, Mr. Bretz contacted PGW seeking to establish service at the service address. Tr. 47-48. PGW Exhibit 1. Mr. Bretz informed PGW that he took ownership of the Service Address on February 23, 2009. Tr. 48. On April 7, 2016, PGW's Revenue Protection Unit provided Mr. Bretz with the terms for the restoration of service at the Service Address, which included the charge of \$18,893.75 for the unauthorized usage of 12,009 CCF of gas during the period February 23, 2009 to April 5, 2016, a security deposit in the amount of \$204.00 in, as well as a reconnection fee of \$123.00. Tr. 48. The charge of \$18,893.75 was based on historical usage at the property during the period April 26, 2002 through March 28, 2003. Tr. 48, 53, 55-57.

John Yoak testified as the field service department cadet with PGW's revenue protection unit who visited the Service Address on April 5, 2016. Tr. 62. Mr. Yoak testified that PGW had previously shut off gas service for the Service Address at the curb. Tr. 77. On April 5, 2016, he knocked on the front door of the Service Address, received no answer, and proceeded to check the curb box. He testified that he found gas on at the curb and that the curb box was covered in trash which he had to dig up in order to turn off the gas. Tr. 77-78. It is unclear from his testimony whether or not he was successful in turning off the gas at the curb box. Mr. Yoak testified that after his attempt at the curb box, he noticed a note on the front door of the Service Address informing visitors to use the side door. When he knocked on the side door, he was given access to the property by Mr. Bretz. He described the Service Address as being in the middle of a rehab process, with no carpet or hardwood flooring, just the base layer of plywood on the ground. Tr. 74. He testified that he found gas on the meter with a 5% natural flow in the fuel line. Tr. 64, 70, 73, PGW Exhibit 2. He also testified that the red caps were missing from Meter # 18544364 serving the Service Address. Tr. 64-65, PGW Exhibit 2. He explained that the red caps on a PGW meter function as a seal, covering the screws that connect the ERT head to the rest of the meter. Tr. 64-65. If the ERT head is removed, the meter cannot record or report gas usage. Tr. 65, 72. Removing the ERT will allow gas to flow through the meter unregistered. Tr. 51-52. Mr. Yoak further explained that the red caps do not come off by themselves. They must be pried out with force. Tr. 65-66. Upon further inquiry, Mr. Yoak admitted that the screws that connected the ERT to the meter were not lose or missing, and that

other than the missing red caps there was no other visible indicator that the meter was tampered with.

In addition, Mr. Yoak testified that his handheld device recorded a tilt count of 100 and a magnetic count of six from the meter at the Service Address. Tr. 71, 95, PGW Exhibit 2. Mr. Yoak testified that he found the following gas appliances at the property: a 69,000 BTU house heater, a 150,000 BTU hot water heater, and a 22,000 BTU dryer. Tr. 52, 71, PGW Exhibit 3. He concluded his field visit by turning the gas valve off inside the Service Address and removing Meter # 18544364 from the property at index 1769. Tr. 73-74, PGW Exhibits 2 and 3.

Timothy Sullivan testified as superintendent of revenue protection for PGW. Tr. 82. He testified with regard to the tamper counts recorded by Meter # 18544364. Tr. 84. In particular, he stated that tamper counts - the tilt count and the magnetic count - are set when the meter is installed at a property. Tr. 84. The tamper count remains unchanged unless the meter is tampered with. Tr. 84, 92. Mr. Sullivan explained that the tilt count changes every time that the ERT and index are tilted in excess of 60 degrees. Tr. 85. Similarly, every time the AMR device comes in close proximity of a strong magnetic field, a switch is lifted stopping the AMR portion of the meter from recording and changing the magnetic count in the meter. Tr. 85.

Mr. Sullivan further explained that the tamper count is information that PGW gathers through the AMR and the ERT that is on the meter. Tr. 85. With regard to the method of how PGW collects tamper count information from its meters, Mr. Sullivan stated, "we go around every street in Philadelphia and we obtain that read, and it gives us all this information" in addition to the meter reading that is reported every month. Tr. 85. He explained that PGW's meters report the tamper counts every month. Tr. 99.

In rebuttal, Mr. Bretz could only surmise that the tamper count change could have resulted from the demolition and construction going on at the property. Tr. 104. Mr. Bretz challenged the accuracy of the tamper count information by questioning PGW's failure to act on the increasing tamper counts that were being reported by the meter during the period March 2009

to April 2016. Tr. 98, see also 104. Mr. Sullivan responded that the gas was supposed to be off at the Service Address during that entire time and that the Company had only been able in the last three years to gain access to this type of information. Tr. 98-100.

After carefully considering the evidence collected in this case, I find that the Complainant successfully carried his burden of proving that he is not responsible for unauthorized use of gas service at the Service Address for the entire period March of 2009 to April of 2016. While the Complainant admitted that he did engage in the unauthorized usage of gas when he turned on the inside valve for the gas meter and connected the heating system to PGW's meter, he also established a prima facie case that there was no heating system in place at the Service Address before fall of 2015. Respondent failed to rebut the Complainant's prima facie case. The evidence put forth by PGW shows that the tamper counts recorded by Meter # 18544364 from the time it was installed at the Service Address to April 5, 2016 were 100 tilt counts and six magnetic counts; however only 18 of the tilt counts and five of the magnetic counts were recorded during the period March 2009 to April 2016 (PGW Exhibit 4, see also Tr. 84-87, 93), which means that the vast majority (82 out of 100) of the tilt counts were recorded before Mr. Goss and Mr. Bretz took possession of the Service Address. This, in addition to the fact that, although PGW had last terminated gas services at the Service Address on October 5, 2005, the Respondent had to go back to April 26, 2002 through March 2003, in order to get a full year of historical usage at the property, makes it more likely than not that the Complainant "inherited" the tampered meter when he took possession of the Service Address in March of 2009. See PGW Exhibits 4 and 5.

In view of the above, I find that the Complainant is responsible for unauthorized usage of gas at the Service Address for the period September 2015, to April 5, 2016. I note that during this case, the Complainant has claimed three different dates as potential starting points for his liability for the unauthorized gas service. In his formal Complaint signed May 2, 2016, Mr. Bretz alleged that the installation of the gas furnace was completed sometime in the fall of 2015, which prompted the discovery of gas service at the property. See Complaint ¶ 5. He claimed that he moved to the Service Address in January of 2016 and assumes responsibility for gas usage from January 2016 until April 5, 2016. *Id.* At the hearing on July 13, 2016, Mr. Bretz

entered into the record in this case receipts evidencing the purchase of gas pipes and gas fittings in February of 2016. Of these three dates, I have chosen the September 2015 one as the starting point for Mr. Bretz' liability for unauthorized usage at the Service Address since it was part of a statement made closer to the date of the events in question. Consequently, PGW shall recalculate Mr. Bretz' charges related to the unauthorized usage of gas to cover the period September 1, 2015, to April 5, 2016. PGW is further ordered to issue a new makeup bill to Complainant and provide a copy of the same to the Commission's Bureau of Consumer Services within thirty (30) days of the date of this Order.

I turn now to the Complainant's request for a payment arrangement. This relief was requested in the formal Complainant form but was not repeated at the evidentiary hearing. I shall address this request only to the extent of pointing out that the Commission has ruled a payment arrangement to be inappropriate when the person requesting the arrangement was involved in a theft of utility service. See *Darnell Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541, (Opinion and Order entered April 27, 2015). "To do otherwise sends the wrong message to all other law abiding ratepayers that those who willfully misuse utility service can receive the benefit of a delayed repayment period at no interest to repay a debt arising from the misuse of service." *Id.*, at 10.

CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving that she is entitled to relief from the Commission. 66 Pa.C.S.A. § 332(a)

3. "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).

4. Complainant successfully carried his burden of proving that he is not responsible for charges related to previously unbilled services due to theft covering the period February 23, 2009, to August 31, 2015. 66 Pa.C.S.A. § 1407(d) and (e); 52 Pa.Code §§ 56.2, 56.35(b).

5. Complainant failed to carry his burden of proving that he is not responsible for charges related to previously unbilled services due to theft covering the period September 1, 2015 to April 5, 2016. 66 Pa.C.S.A. § 1407(d) and (e); 52 Pa.Code §§ 56.2, 56.35(b).

6. A payment arrangement is not appropriate when the person requesting the arrangement was involved in a theft of utility service. See *Darnell Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541, (Opinion and Order entered April 27, 2015).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Christopher L. Bretz against Philadelphia Gas Works at Docket No. F-2016-2543880 is granted in part, and denied in part.

2. That the formal Complaint filed by Christopher L. Bretz against Philadelphia Gas Works at Docket No. F-2016-2543880 is granted in part with regard to Mr. Bretz's claim that he is not responsible for the unauthorized usage of gas during the period February 23, 2009 through August 31, 2015.

3. That the formal Complaint filed by Christopher L. Bretz against Philadelphia Gas Works at Docket No. F-2016-2543880 is denied in part with regard to Mr. Bretz's claim that he is not responsible for the unauthorized usage of gas during the period September 1, 2015 through April 5, 2016.

4. That Philadelphia Gas Works shall recalculate Christopher L. Bretz's makeup bill to cover only the period September 1, 2015 to April 5, 2016.

5. That, within thirty (30) days of the date of this Initial Decision, Philadelphia Gas Works shall issue a new bill to Christopher L. Bretz detailing how the bill was recalculated. A copy of this recalculated bill shall be served on the Commission's Bureau of Consumer Services.

Date: July 21, 2017

/s/
Eranda Vero
Administrative Law Judge