

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shayne J. Reed

v.

Philadelphia Gas Works

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C-2016-2571665

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complaint of Shayne J. Reed against Philadelphia Gas Works because the Complainant failed to meet his burden of demonstrating that PGW is improperly requiring payment from him for unauthorized gas usage that occurred at the service address between August 7, 2009 and June 21, 2016.

**HISTORY OF THE PROCEEDING**

On October 3, 2016, Shayne J. Reed (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes marked “[i]ncorrect charges are on my bill” and “[o]ther,” next to which he provided a statement alleging that PGW will not activate gas service to his home because of a bill for which he should not be held responsible. Under the “requested relief” section, the Complainant indicated that he wants to initiate service in his name.

On November 1, 2016, Respondent filed an Answer denying that there are incorrect charges on the bill for service at 1021 E. Dorset Street, Philadelphia, PA (service address). Respondent indicated: that the last known customer of record at the service address was Stacy Reed; that Stacy Reed established service at the service address on October 24, 1998; that PGW terminated gas service at the service address on August 7, 2009, for non-payment; and that on December 21, 2009, the \$1,429.74 balance went into “write off” status. Respondent further indicated: that on June 21, 2016, a PGW technician visited the service address on a Curb Valve Safety Check; that the technician could not gain access to the service address on that date; that the technician found the gas on at the curb and shut it off with an expander; that on August 17, 2016, the Complainant visited a PGW service center to establish service at the service address; that PGW advised him that PGW’s Revenue Protection Unit (RPU) would have to visit the property to complete a safety check; that on August 19, 2016, PGW visited the service address and gained access to the meter; that upon entry, the technician found the gas off and discovered a tampered meter bypass; and that the technician removed meter No. 1612766 and left the gas off with locking plugs inlet to outlet, pin in pilfer and re-curbed with an expander. Additionally, PGW indicated that on August 29, 2016, it discovered that the wriggler was broken off behind the Encoder Receiver Transmitter (ERT) head of the meter, causing gas to pass through the meter unregistered, and that there was a tamper count of 25 and a magnetic count of 2. PGW maintained that the Complainant must pay theft charges of \$14,266.18 with a reconnection fee, deposit and any past bills.

By Hearing Notice dated November 14, 2016, a hearing was scheduled for January 11, 2017 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on November 17, 2016. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

By Hearing Cancellation/Reschedule Notice dated November 17, 2016, the hearing was rescheduled for December 19, 2016, at 10:00 a.m.

The hearing convened as scheduled on December 19, 2016. Laureto Farinas, Esq., counsel for PGW was present with a witness and was prepared to proceed. Mr. Reed also appeared for the scheduled hearing.

At the outset of the hearing, Mr. Farinas asked to speak with Mr. Reed to see if they could resolve his Complaint. Following their discussions, both parties requested a postponement of the hearing to allow them time to obtain any account information in the Complainant's name from Verizon and PECO Energy Company for the period 2007 through 2016. I granted the postponement request and adjourned the hearing.

By Hearing Cancellation/Reschedule Notice dated January 5, 2017, the hearing was rescheduled for February 21, 2017, at 10:00 a.m.

On January 23, 2017, PGW filed an Application for Subpoena of PECO Account Records for Shayne J. Reed. PGW endorsed its Application with a Notice to Plead, advising that any objection to the Application must be filed within ten days of service. Objections were due by February 2, 2017. Complainant did not file an objection to PGW's Application.

By Interim Order dated February 8, 2017, I granted PGW's Application for Subpoena.

The rescheduled hearing convened as scheduled on February 21, 2017. Mr. Farinas was present on behalf of PGW with three witnesses in person and one witness available by telephone and was prepared to proceed. Mr. Reed did not appear for the rescheduled hearing.

No witnesses were presented and no exhibits were introduced into the record. Mr. Farinas moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. I informed Mr. Farinas that I would take his Motion into consideration and adjourned the hearing.

After I adjourned the hearing on February 21, 2017, my legal assistant received a call from a person identifying himself as the Complainant's brother. He reported that Mr. Reed had experienced a medical emergency the previous evening that prevented him from attending the hearing. He made an oral request, on the Complainant's behalf, for a postponement of the hearing. My legal assistant instructed that the Complainant would have to submit a written request for a continuance detailing his medical emergency, and that he should submit a doctor's note concerning the medical condition that caused him to miss the hearing.

On March 7, 2017, I received a letter from the Complainant in which he explained that he missed the February 21, 2017, hearing due to health issues. I treated Mr. Reed's request as a Motion for Continuance and forwarded a copy to Mr. Farinas. Mr. Farinas informed me that he intended to respond to Mr. Reed's Motion. Pursuant to 52 Pa.Code § 5.103(c), PGW had 20 days from the date of service to respond to Complainant's Motion. In this case, PGW's response was due on or before March 27, 2017. Mr. Farinas never submitted a response to Mr. Reed's Motion.

By Order dated March 30, 2017, I granted Mr. Reed's Motion.

By Hearing Cancellation/Reschedule Notice dated March 30, 2017, the hearing was rescheduled for May 17, 2017, at 10:00 a.m.

The hearing convened as scheduled on May 17, 2017. Complainant appeared *pro se* and testified. Complainant also presented the testimony of his brother, Shannon Reed. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of the following witnesses: Tiffany Jones, a Senior Customer Review Officer; Malik Marable, a PGW Service Technician; and Richard Lipscomb, a PGW Field Services Supervisor. Respondent offered nine exhibits, seven of which (PECO Exhs. 1 through 7) were admitted into evidence.

The record in this case consists of a 177-page transcript and seven exhibits. The record closed on July 14, 2017, when I received the transcript of the May 17, 2017, hearing.

## FINDINGS OF FACT

1. The Complainant in this case is Shayne J. Reed.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant's Complaint concerns a request for service at 1021 E. Dorset Street, Philadelphia, PA (service address).
4. Complainant has co-owned the service address with his brothers Sean, Stacy and Shannon since November 1992. Tr. 35-36, 44-46, 108; PGW Exh. 6.
5. Gas appliances at the service address include a stove, heater and water heater. Tr. 39, 154.
6. Gas service at the service address was previously in the name of Stacy M. Reed. Tr. 97; PGW Exh. 1.
7. PGW terminated gas service in Stacy M. Reed's name on August 7, 2009 for non-payment. Tr. 97, 102-103; PGW Exhs. 1 & 2.
8. When PGW terminates gas service for non-payment, a technician turns the gas off at the curb with a valve key. PGW does not use an expander for such terminations. Tr. 161.
9. On June 21, 2016, a PGW technician went to the service address to perform a Curb Valve Safety Check. Tr. 98, 103; PGW Exhs. 1 & 2.
10. The PGW technician found that the gas to the service address had been turned on at the curb. Tr. 98, 103, 151; PGW Exhs. 1 & 2.

11. The PGW technician turned the gas off at the curb and placed an expander to prevent unauthorized restoration at the curb. Tr. 98, 103, 155; PGW Exhs. 1, 2 & 7.

12. On August 17, 2016, the Complainant visited the Germantown District Office to request service in his name at the service address. Tr. 98; PGW Exh. 1.

13. A PGW representative informed the Complainant that someone would have to perform a safety check at the service address before gas service could be established. Tr. 99; PGW Exh. 1.

14. On August 19, 2016, a PGW technician visited the service address to perform a safety check/meter investigation. Tr. 100, 151; PGW Exhs. 1, 2 & 7.

15. The PGW technician found the gas service was off at the curb. Tr. 151; PGW Exh. 2.

16. The PGW technician was given access to the gas meter. Tr. 152.

17. After gas is discontinued, any gas in the fuel line will dissipate in approximately one month. Tr. 153, 158, 163, 170.

18. Presence of gas in the fuel line is an indicator that gas has been flowing through the meter and into the customer's home. Tr. 154.

19. The technician used a gas detection device and discovered 60 lels (Lower Explosive Limit) of gas in the Complainant's fuel line. Tr. 100, 152, 157-158; PGW Exh. 1.

20. A fuel line can have a maximum reading of 100 lels; a reading of 60 lels constitutes a high reading of gas in the fuel line. Tr. 163-164, 168.

21. The PGW technician removed the meter and installed locking plugs. Tr. 151; PGW Exh. 2.

22. An Encoder Receiver Transmitter (ERT) head is the electronic device on a meter that records gas usage and transmits the reading to PGW's Automatic Meter Reading (AMR) vans that collect readings from outside of a building. Tr. 100, 166.

23. The "wiggler" is a device on the back of the ERT that drives the index on the meter. Tr. 164.

24. As gas passes through the meter, it moves the wiggler which records gas usage on the meter. Tr. 165.

25. If a wiggler is damaged, gas passing through the meter will not move the index, and no gas usage will be recorded. Tr. 165.

26. PGW's subsequent examination of the Complainant's meter demonstrated that the wiggler had been broken off of the meter. Tr. 164.

27. PGW determined that there was unauthorized usage at the service address between August 7, 2009, and June 21, 2016. Tr. 103.

28. PGW determined that the Complainant owed \$14,266.18 based on 9,050 CCFs of unauthorized gas usage at the service address between August 7, 2009 and June 21, 2016. Tr. 105-106; PGW Exhs. 1 and 4.

29. PGW calculated the estimated usage and charges at the service address between August 7, 2009, and June 21, 2016, based on the 1,298 CCFs of gas that were used at the service address between September 2007 and August 2008. Tr. 106-108; PGW Exh. 4.

30. Between August 2009 and June 2016, the Complainant received all of his personal mail at the service address. Tr. 41.

31. Complainant is currently living at the service address with his brothers Shannon and Stacy. Tr. 42, 53, 80.

32. Complainant's brother Shannon has always used the service address as both his physical and mailing address. Tr. 68, 83.

33. Complainant and his brother Shannon are co-owners of Platinum Base Corp. Tr. 85-86.

34. Complainant and his brother Shannon use the service address as the mailing address for Platinum Base Corp. Tr. 48-49, 62, 86, 90.

### DISCUSSION

The Public Utility Code, 66 Pa.C.S.A. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

To establish a sufficient case and satisfy the burden of proof, 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). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). 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).

During the hearing, the Complainant testified that although he has been a co-owner of the service address since 1992, he did not live at the service address between August 2009 and June 2016. Complainant testified that he lived at his aunt's house in Maryland during that period, and only returned home on occasion to collect personal items, usually once every one to two months. Tr. 40-41, 45, 55, 63, 66-67.

The Complainant's brother, Shannon Reed, also testified that he did not live at the service address during this period. Shannon Reed testified that he too only returned to the service address on occasion to collect personal items or check on the property, usually once every one to two months. Tr. 69-71, 83-84, 86-87.

In response, PGW witnesses Tiffany Jones and Malik Marable testified that PGW disconnected service to the service address at the curb in 2009 for non-payment. Tr. 79, 102-103. PGW witness Marable testified that in instances where service is terminated due to non-payment, PGW shuts service off at the curb without an expander. Tr. 161. PGW witness Marable further testified that, while performing a safety check at the service address in August 2016, he discovered 60 lels of gas in the fuel line. Tr. 152, 157-158. Both PGW witnesses Marable and Richard Lipscomb testified that any gas left in a fuel line following disconnection will eventually dissipate, with Mr. Lipscomb specifying that it would dissipate in approximately one month. Tr. 153, 158, 163, 170. PGW witness Lipscomb testified that such a high level of gas in the fuel line, when the service was supposed to have been disconnected in 2009, indicates that the gas had recently been on at the service address. Tr. 164, 168.

Regarding PGW's estimated bill for gas service at the service address between August 7, 2009 and June 21, 2016, PGW witness Jones testified and demonstrated that these

charges were calculated based on historic usage at the service address between September 2007 and August 2008. Tr. 106-108; PGW Exh. 4. Ms. Jones explained that PGW utilized the 1,298 CCFs of gas that were actually used at the service address during this period to estimate that approximately 9,050 CCFs of gas were used between August 7, 2009 and June 21, 2016, generating a bill of \$14,266.18. This amount includes a Customer Charge of \$1,080.00, a Commodity Charge of \$5,402.30, a Distribution Charge of \$7,643.69, a Weather Normalization Adjustment Charge of \$186.93, and a DSIC Charge of \$152.66, less a Gas Cost Adjustment of \$127.40 for a total estimated bill of \$14,266.18 for unauthorized service between August 7, 2009 and June 21, 2016. PGW Exh. 4.

The Commission's regulations regarding payment of an outstanding balance at a premises as a condition to restore service provide that:

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.*

*Id.* at § 56.191(d)(emphasis added).

In the present case, the Complainant insisted that he should not be held responsible for any gas charges that accrued between August 2009 and June 2016 because he was living and working in Maryland during that time. However, when asked to state the address where he resided for nearly seven years, he could not remember the address. Moreover, he did not provide any documentation to demonstrate that he was actually residing in Maryland. When asked if his work would show his connection to Maryland during this period, Complainant responded that his work was internet based, and that he did not have any documentation to demonstrate where he was physically working. However, the Complainant did acknowledge that he uses the service address as his personal and business mailing address.

Although the Complainant insisted that he was living and working in Maryland between August 7, 2009, and June 21, 2016, he could not offer any documentation to show that he was living and working in Maryland during this period. No matter how strong the Complainant's assertions are, they cannot form a basis for a finding of fact in his favor. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). Nor does the testimony consisting of guesses, conjecture or speculation - supposition without a premise of fact - which is ordinarily rejected as inadmissible and as proving nothing. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Department of Highways*, 398 Pa. 518, 159 A.2d 206 (1960). Accordingly, I cannot conclude that the Complainant lived in Maryland between August 2009, and June 2016.

The record demonstrates that PGW terminated gas service for the service address at the curb in August 2009 for non-payment and found it on during a curb valve safety check in June 2016. The record further demonstrates that a PGW technician subsequently found a significant amount of gas in the house fuel line when he completed a safety check at the service address, demonstrating that the gas service had recently been in use. Moreover, the record demonstrates that the Complainant used the service address as both his personal and business mailing address during this period. Lastly, the record demonstrates that the bill for unauthorized usage at the service address between August 7, 2009 and June 21, 2016 was based on historic usage at the property between September 2007 and August 2008. Since the Complainant was not able to establish that he resided somewhere other than the service address between August 2009 and June 2016, and because the Complainant's own testimony connected him to the service address during this period, I find that PGW is properly requiring payment of \$14,266.18 from him for the unauthorized gas usage that occurred between August 7, 2009, and June 21, 2016.

Accordingly, the Complainant's Complaint is denied in its entirety.

## CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S.A. § 332(a), the burden of proof in this proceeding is upon the complainant. 66 Pa.C.S.A. § 332(a).

3. 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.

4. Mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). Nor does the testimony consisting of guesses, conjecture or speculation - supposition without a premise of fact - which is ordinarily rejected as inadmissible and as proving nothing. *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Department of Highways*, 398 Pa. 518, 159 A.2d 206 (1960).

5. 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. 52 Pa.Code § 56.191(b).

6. Complainant failed to sustain his burden of demonstrating that he is not responsible for the unbilled usage at the service address.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Shayne J. Reed against Philadelphia Gas Works at Docket No. C-2016-2571665 is denied; and
2. That the record at Docket No. C-2016-2571665 be marked closed.

Date: September 27, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
Christopher P. Pell  
Deputy Chief Administrative Law Judge