

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alexander Lutz	:	
	:	
v.	:	C-2017-2594438
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complainant’s formal Complaint because he failed to sustain his burden of proof to establish that Philadelphia Gas Works wrongly calculated the unbilled usage at the Service Address.

HISTORY OF THE PROCEEDING

On March 20, 2017, Alexander Lutz (Complainant or Mr. Lutz) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that his utility service had been shut off due to alleged meter tampering. The Complainant asserts that PGW created unsafe conditions when it terminated his utility service. He contended there was no tampering and requested that he be reimbursed for the payments made to PGW for these unbilled charges. The Complainant also requested that his records be cleared from any mention of tampering or theft.

On April 10, 2017, Respondent filed an Answer indicating that the Complainant's service was terminated on March 2, 2017, due to unauthorized usage. Respondent asserts that it provided terms for the restoration of service and that it did restore service to the Complainant on March 7, 2017.

By Hearing Notice dated April 19, 2017, a hearing was scheduled for June 8, 2017, at 10:00 a.m., and the matter was assigned to me.¹

I issued a Prehearing Order on June 23, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and also 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.

The hearing convened as scheduled on July 5, 2017. Complainant appeared *pro se* and testified. The Complainant presented two exhibits which were entered into the record at the hearing. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Tiffany Jones, a Customer Review Officer, Garry Miller, a Cadet, and Eric Garrett, a meter technician specialist. Respondent offered five exhibits which were all admitted into evidence.

I indicated at the time of the hearing that I wanted PGW to submit a late filed exhibit regarding the meter testing after the meter was removed from the Service Address. I gave PGW's counsel until July 19, 2017, to submit the exhibit, and July 31, 2017, for the Complainant to submit any objections to the exhibit.

On July 20, 2017, PGW submitted late filed Exhibit 2A which was a corrected screen shot of PGW Exh. 2 and a letter from Mr. Garrett's supervisor, Bernard Breslin. On the

¹ The matter was rescheduled to July 5, 2017, due to a conflict in the presiding officer's schedule. A Hearing Cancellation/Reschedule Notice was issued on May 5, 2017.

same date, the Complainant objected to the late filed exhibit because it was submitted after the established deadline.²

The hearing resulted in a 169-page transcript. The record closed on August 1, 2017, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Alexander Lutz.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. Complainant resides at 450 Lyceum Avenue, Apartment # 1, Philadelphia, Pennsylvania 19128 (Service Address). Tr. 8-9.
4. Complainant lives at the Service Address with one roommate, Jonathan Osmolinski. Tr. 10.
5. The Service Address is a house that was converted into apartments. Tr. 10.
6. The Complainant rents a unit at the Service Address. Tr. 9, 18.
7. The Complainant has had gas service in his name at the Service Address since July 2, 2014. Tr. 97-98, 100; PGW Exh. 4.
8. The meter at the Service Address stopped registering usage as of the billing date of March 21, 2015. Tr. 103; PGW Exh. 4.

² Due to the fact that the Respondent did not timely submit Late Filed Exhibit 2A, and the Complainant properly objected to the exhibit, the exhibit will not be entered into the record.

9. On February 14, 2017, PGW sent correspondence to the Complainant requesting that he set up an appointment for a safety inspection of the Service Address. Complainant Exh. 2.

10. On February 23, 2017, the Complainant contacted PGW and set up an appointment for March 2, 2017. Tr. 10.

11. On March 2, 2017, a PGW technician, Garry Miller, visited the Service Address for a safety check. Tr. 49; PGW Exh. 1.

12. Mr. Miller removed the meter at that time and put locking plugs and bike locks on the pipe. Tr. 61; PGW Exh. 1.

13. Based on a missing red cap, missing screw and loose ERT³, Mr. Miller determined there was tampering with the meter. Tr. 52, 54-55, 57, 59, 60, 67; PGW Exh. 1.

14. On March 2, 2017, the Complainant contacted PGW regarding the removal of the meter and terms for restoring service. Tr. 12.

15. PGW performed a gas usage analysis for the Service Address to determine the unbilled usage. Tr. 96; PGW Exh. 3.

16. The gas usage analysis was performed for the time period from July 20, 2010 to March 2, 2017. Tr. 97; PGW Exh. 3.

17. The Complainant's account is a heating account. Tr. 98; PGW Exh. 3,4.

18. The gas appliances at the Service Address include a gas house heater, gas water heater, gas stove, and two gas fireplaces. Tr. 18-19, 50-51.

³ The ERT (Encoder receiver transmitter) head is the device on the meter that transmits the reading electronically to the meter reading vehicle. Tr. 104.

19. The gas usage analysis shows a drop in usage during the time period that Complainant was customer of record. PGW Exh 3.

Dates		
From	To	CFDD ⁴
7/20/2010	7/20/2011	19.2
7/20/2011	7/20/2012	15.9
7/20/2012	7/19/2013	14.6
7/19/2013	7/21/2014	14.7
7/2/2014	7/20/2015	5.4
7/20/2015	7/19/2016	-7.7
7/19/2016	3/2/2017	-6.0

20. PGW used historic usage for the timeframe from March 21, 2013, to February 20, 2014, at the Service Address and degree day information provided by the National Oceanic and Atmospheric Administration (NOAA) and billed the Complainant \$2,515.90 in unbilled usage on March 6, 2017 for the time frame from March 21, 2015 to March 2, 2017. Tr. 105, 107, 108, 110; PGW Exh 4, 5.

21. On March 6, 2017, the Complainant paid the \$2,515.90 in unbilled usage, a reconnection fee of \$123.23, and a security deposit of \$26.00. Tr. 24, 29; PGW Exh. 4.

22. On March 7, 2017, the Complainant's gas service was restored. Tr. 24.

23. The Complainant had no unauthorized usage charges on his account after March 7, 2017. Tr. 105; PGW Exh. 4.

⁴ CFDD= the cubic feet of gas used per degree day

24. The unbilled usage occurred while the Complainant resided at the Service Address and was the customer of record.

25. The meter for the Service Address is located in the basement of the Service Address. Tr. 16-17, 28.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 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. § 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).

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 his 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*, 501 Pa. 433, 461 A.2d 1234 (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).

Termination of Service

The Complainant contends that PGW created unsafe conditions by immediately terminating his gas service on March 2, 2017, when it removed his meter. PGW asserts that it was allowed to immediately terminate service on that date because they found evidence of tampering during a visit to the Service Address on March 2, 2017.

Commission regulations regarding immediate termination of service at 52 Pa.Code § 56.98(a)(3) provide in pertinent part that “[a] public utility may immediately terminate service for any of the following actions by the customer . . . [t]ampering with meters or other public utility equipment.” *See also* 52 Pa.Code § 59.24(b).

Mr. Lutz testified that he did not tamper with the meter at the Service Address. Tr. 20. Mr. Lutz indicated that the meter was located in the basement which everyone in the building had access. Tr. 17.

It is undisputed that PGW visited the Service Address on March 2, 2017. On March 2, 2017, a PGW technician, Garry Miller, visited the Service Address for a safety check. Tr. 49; PGW Exh. 1. Based on a missing red cap, missing screw and loose ERT, Mr. Miller believed there was tampering with the meter. Tr. 52, 54-55, 57, 59, 60; PGW Exh. 1. Mr. Miller removed the meter at that time and put plugs and bike locks on the pipe. Tr. 61; PGW Exh. 1.

Further, the meter at the Service Address stopped registering usage as of the billing date of March 21, 2015. Tr. 103; PGW Exh. 4.

Upon review of the evidence, I believe that PGW did not err in immediately terminating service at the Service Address on March 2, 2017. The Company is allowed to immediately terminate service if it finds evidence of tampering of the meter. *See* 52 Pa.Code § 56.98(a)(3); 52 Pa.Code § 59.24(b). While Mr. Lutz indicated that he did not tamper with the meter and that multiple parties had access to the basement where the meter was located, the testimony of Mr. Miller establishes that there was evidence of tampering of the meter at the Service Address. Specifically, Mr. Miller found the red cap missing, a missing screw, and the ERT was loose. Mr. Miller testified that these abnormalities with the meter are indicative of meter tampering, which is why he made a tampering report and removed the meter. The Complainant did not provide any adequate explanation for these issues. As such, the Complainant failed to meet his burden of proof in this regard.

Tampering Allegations

During the hearing, the Complainant denied tampering with the meter at the Service Address. The Complainant argued that since he did not cause this usage discrepancy, the Company should remove any mention of theft in his records and issue a repayment of the unbilled usage charged to his account. However, the Respondent asserts that Mr. Lutz was the responsible party and the meter was properly removed by PGW.

The Complainant has had gas service in his name at the Service Address since July 2, 2014. Tr. 97-98, 100; PGW Exh. 4. The meter at the Service Address was no longer registering usage. Tr. 103; PGW Exh. 4. According to company records, the meter stopped registering usage as of the billing date of March 21, 2015. Tr. 103; PGW Exh. 4. The Complainant did not dispute that he used gas service from March 21, 2015 to March 2, 2017.

As previously noted above, Mr. Miller visited the Service Address on March 2, 2017 and removed the meter when he saw evidence of tampering. On March 2, 2017, the

Complainant contacted PGW regarding the removal of the meter and terms for restoring service. Tr. 12. After an investigation, PGW calculated the unbilled usage for the Service Address. PGW Exh. 5. PGW used historic usage for the timeframe from March 21, 2013, to February 20, 2014, at the Service Address and degree day information provided by the National Oceanic and Atmospheric Administration (NOAA). Tr. 107, 108; PGW Exh 5.

On March 6, 2017, PGW billed the Complainant \$2,515.90 in unbilled usage for the timeframe from March 21, 2015 to March 2, 2017. Tr. 105, 110; PGW Exh. 4, 5. On March 6, 2017, the Complainant paid the \$2,515.90 in unbilled usage, a reconnection fee of \$123.23, and a security deposit of \$26.00. Tr. 24, 29; PGW Exh. 4. On March 7, 2017, the Complainant's gas service was restored. Tr. 24. The Complainant had no unauthorized usage charges on his account after March 7, 2017. Tr. 105; PGW Exh. 4.

In this matter, the Complainant did not dispute that he used gas during the timeframe from March 21, 2015, to March 2, 2017. The Complainant asserts that the meter failed and there was no tampering. Mr. Miller visited the Service Address on March 2, 2017 and removed the meter when he saw evidence of tampering, specifically the missing red cap and screw. There appears to be sufficient evidence that there was tampering of the meter. However, I am not concluding that the Complainant did the tampering or even had knowledge of it. *See Vanessa Kull v Philadelphia Gas Works*, Docket No. C-2013-2379510 (Final Order entered May 30, 2014) (finding that while the complainant did not do the tampering, she was responsible for the previously unbilled gas usage at the service address because she was customer of record during the timeframe at issue). However, the utility is entitled to payment for service that was utilized by the customer.⁵ The Complainant was the responsible party for the account, regardless of whether or not he tampered with the meter. At this point, since payment has been made, the only question is whether the Company properly calculated the unbilled usage for the timeframe at issue.

⁵ A public utility is entitled to bill for previously unbilled public utility service which accrued within the past four years due to billing error, meter failure or leakage. In that case, the unbilled usage may be amortized over the same period of time that the unbilled usage accrued. *See* 52 Pa.Code § 56.14(1-2).

There is nothing to indicate that PGW failed to properly calculate the unbilled usage at the Service Address. The Company used historical usage from the Service Address. Further, PGW used the degree day data from NOAA. There is nothing in the record to indicate, and the Complainant did not present any evidence to establish, that PGW improperly calculated the unbilled usage at the Service Address for the time period from March 21, 2015, to March 2, 2017. At this point, there are no unauthorized charges on the Complainant's account. As such, the Complainant has not met his burden of proof to demonstrate that the Company erred in its calculation of the unbilled usage and the Complaint must be dismissed with respect to the tampering allegations.

Meter Location

During the hearing in this matter, the Complainant argues that PGW violated Commission regulations when it failed to place his meter on the outside of the Service Address when service was restored. Tr. 28. PGW argues that it was not required to place the meter outside when it restored service because it was not replacing a service line in this instance.

Unless otherwise allowed or required in Section 59.18 of the Commission's regulations, meters and regulators must be located outside and aboveground. 52 Pa.Code § 59.18(a). Utilities must comply with this regulation beginning September 13, 2014, when replacing existing meters, regulators and service line facilities. 52 Pa.Code § 59.18(g)(2). Utilities must comply with this regulation by September 13, 2034, or by the date established in the distribution integrity management plan, whichever occurs first. 52 Pa.Code § 59.18(g)(3). According to the Final Rulemaking Order issued by the Commission, regarding meter, regulator and service line location, the meter relocation would be in conjunction with the replacement of the regulator and service line for the premises. *Rulemaking re Amendment to 52 Pa.Code § 59.18 Meter Location*, Docket No. L-2009-2107155 (Final Rulemaking Order entered May 23, 2014).

In this matter, when the Company replaced the meter when it restored service, the meter was placed in the basement of the Service Address, where the meter had been located prior

to its removal. Tr. 16-17, 28. There is no indication in the record that PGW replaced the regulator, and service line at the Service Address. As such, PGW is not required to place the meter outside according to the Commission's regulations. *See* 52 Pa.Code § 59.18(g)(2) and (3). Thus, the Complainant's Complaint fails in this regard.

Security Deposit

At the hearing, the Complainant argued that he should not have been charged a security deposit to restore service because he had excellent credit. PGW asserts that it charges a security deposit to any customer to restore service after it finds meter tampering. Tr. 106.

The public utility may charge a security deposit for a customer whose service was terminated due to meter tampering. 66 Pa.C.S. § 1404(a)(1)(vii).

The Complainant's service was terminated based on findings of meter tampering. *See* Tr. 52, 54-55, 57, 59, 60, 67; PGW Exh. 1. As such, under the Public Utility Code, PGW was allowed to charge a security deposit to have service restored. *See* 66 Pa.C.S. § 1404(a)(1)(vii). Therefore, the Complainant failed to meet his burden of proof regarding the request for a security deposit and the Complaint must be dismissed in this regard.

Based on all the above, the Complainant has failed to meet his burden of proof in this matter and the Complaint is dismissed.

CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 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. A public utility may immediately terminate service when a customer tampers with meters or other public utility equipment. 52 Pa.Code § 56.98(a)(3).

5. The Complainant failed to meet his burden to demonstrate that PGW improperly terminated his utility service on March 2, 2017.

6. The Complainant failed to meet his burden of demonstrating that PGW improperly calculated the amount of prior unbilled usage at the Service Address for the timeframe from March 21, 2015 to March 2, 2017.

7. Unless otherwise allowed or required in Section 59.18 of the Commission's regulations, meters and regulators must be located outside and aboveground. 52 Pa.Code § 59.18(a). However, utilities must comply with this regulation beginning September 13, 2014, when replacing existing meters, regulators and service line facilities. 52 Pa.Code § 59.18(g)(2). Utilities must comply with this regulation by September 13, 2034 or by the date established in the distribution integrity management plan, whichever occurs first. 52 Pa.Code § 59.18(g)(3).

8. The Complainant failed to meet his burden of demonstrating that PGW violated the Commission's regulations in its placement of the meter at the Service Address.

9. The public utility may charge a security deposit for a customer whose service was terminated due to meter tampering. 66 Pa.C.S. § 1404(a)(1)(vii).

10. The Complainant failed to meet his burden of demonstrating that PGW improperly charged a security deposit after there was an allegation of meter tampering.

