

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jamie Kuebler

v.

Philadelphia Gas Works

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C-2016-2567705

**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 terminated his service when there was evidence of tampering, or erred in billing him for unbilled usage at the Service Address.

**HISTORY OF THE PROCEEDING**

On September 2, 2016, Jamie Kuebler (Complainant or Mr. Kuebler) 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 PGW was charging him in excess of what he was originally billed for usage. He contends that usage at the Service Address was low because there were other heating sources and an electric water heater. The Complainant also disputed that there was tampering of the meter at the Service Address. As relief, the Complainant requested the bill for the Service Address be revised or the charges for unbilled usage be removed completely.

This matter is an untimely appeal of a decision from the Bureau of Consumer Services (BCS) dated May 4, 2016 at Case No. 3412128 which dismissed the informal complaint of the Complainant.

On October 12, 2016, Respondent filed an Answer indicating that the Complainant's service was terminated on November 17, 2015, due to unauthorized usage. The Respondent asserts that the bill for unauthorized usage was calculated using the BTUs on the house heater that was found connected to the gas service at the time service was terminated.

By Hearing Notice dated November 4, 2016, a hearing was scheduled for Friday, January 6, 2017, at 10:00 a.m., and the matter was assigned to Administrative Law Judge Cynthia Fordham.

On November 29, 2016, Judge Fordham issued a Prehearing Order. 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.

On December 29, 2016, PGW filed a Motion for Continuance of the hearing scheduled on January 6, 2017. Via Prehearing Order # 2 dated January 4, 2017, Judge Fordham granted the Respondent's Motion for Continuance. On January 5, 2017, a Cancellation Notice was issued for the hearing scheduled on January 6, 2017.

On February 27, 2017, a Judge Change/ Rescheduled Hearing Notice was issued, and a new initial hearing was scheduled for Tuesday, April 4, 2017, at 10:00 a.m. and the matter was reassigned to me.

The hearing convened as scheduled on April 4, 2017. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Tiffany Jones, a Customer Review Officer, Brandon Cooper, a Field Service Technician, and Richard Lipscomb, a Field Services Supervisor assigned to the Revenue

Protection Department. Respondent offered eight exhibits which were all entered into the record. At the conclusion of the hearing, I determined that a further hearing was necessary to allow the Complainant to provide additional testimony and evidence and also to allow PGW to conduct an investigation at the Service Address.

By Hearing Notice dated April 26, 2017, a further hearing was scheduled for Tuesday, May 23, 2017, at 10:00 a.m.

The second hearing proceeded as scheduled on May 23, 2017. The Complainant again appeared *pro se* and testified on his own behalf. The Complainant presented the testimony of Jose Torres, who resided at the Service Address. The Complainant also presented three exhibits at the hearing which were entered into the record. The Respondent also appeared and was again represented by Graciela Christlieb, Esq., who presented the testimony of Nicholas Simeo, a Field Supervisor in the Revenue and Protection Unit. The Respondent presented three additional exhibits which were entered into the record at the hearing.

The hearings resulted in two transcripts with a total of 182 pages.<sup>1</sup> The record closed on June 19, 2017, when I received the transcript of the second hearing.

#### FINDINGS OF FACT

1. The Complainant in this case is Jamie Kuebler.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Service Address is 4648 G Street, Philadelphia, Pennsylvania 19120 (Service Address). Tr-1. 19.
4. The Service Address is a two-unit duplex. Tr-1. 20.

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<sup>1</sup> The hearing transcripts were produced by two court reporting agencies. The transcripts are not consecutively numbered. For the purposes of this decision, the hearing on April 4, 2017, is referred to as Tr-1. and the hearing on May 23, 2017, is referred to as Tr-2.

5. The Complainant owns the Service Address. Tr-1. 20.
6. The Complainant bought the Service Address on April 9, 2004. PGW Exh. 2.
7. In 2006, the Complainant established utility service in his name with PGW at the Service Address. Tr-1. 56; PGW Exh. 7.
8. From June 24, 2010 to November 16, 2015, PGW made 13 attempts to contact the Complainant and access the meter at the property to perform a meter exchange. Tr-1. 39-40, 48; PGW Exh. 3.
9. PGW mailed correspondence on March 25, 2013, September 15, 2014, September 23, 2014 and October 14, 2015 to the Complainant stating that it needed to gain access to the property to exchange the meter and that his service may be terminated if he failed to provide access. Tr-1. 48-49; PGW Exh. 4.
10. There was no curb valve at the Service Address so PGW needed access to the property in order to terminate service. Tr-1. 49.
11. On November 17, 2015, Brandon Cooper, Field Service Technician, went to the Service Address on a usage discrepancy investigation. Tr-1. 30; PGW Exh. 1.
12. Mr. Cooper found the gas on at the Service Address. Tr-1. 30; PGW Exh. 1.
13. Mr. Cooper removed the meter from the Service Address because he found that the red caps were missing from the ERT<sup>2</sup> head. Tr-1. 31, 32; PGW Exh. 1.

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<sup>2</sup> ERT stands for Encoder Receiver Transmitter.

14. Mr. Cooper shut off the gas service with locking plugs and a bike lock on the meter valve. Tr-1. 30; PGW Exh. 1.

15. Mr. Cooper found an operational gas house heater that was 114,000 BTUs. Tr-1. 30-31; PGW Exh. 1.

16. Richard Lipscomb, a Supervisor in Field Service with the Revenue Protection Unit was also present at the Service Address on November 17, 2015. Tr-1. 70, 71.

17. Mr. Lipscomb observed that the red caps were missing and there was unusual wear on the screws on the ERT head. Tr-1. 71-72.

18. Mr. Lipscomb and Mr. Cooper were not able to gain access to the first and second floor of the Service Address on November 17, 2015 to check for other gas appliances in the units. Tr-1. 31; PGW Exh. 1.

19. The red caps are to prevent tampering with the meter and cannot be replaced once removed. Tr-1. 72.

20. The unusual wear on the screws was indicative of the screws being removed and retightened. Tr-1. 72.

21. If the ERT head is dislodged, it will stop recording the gas that passes through the meter. Tr-1. 73.

22. If the ERT head is reengaged with the meter, it will start recording gas that passes through the meter. Tr-1. 73.

23. On November 19, 2015, the meter from the Service Address was tested with a Manual Read of 6000, an Auto Read of 6001, a Tilt Tamper of 207, a Magnetic Tamper of zero, and the drive was a two-foot drive. Tr-1. 75; PGW Exh. 8.

24. Tilt tamper measures any time that the ERT head is dislodged and tilted 60 degrees. Tr-1. 76.

25. The manual and auto reads on the meter were within 1.18 cubic feet and are within the two percent tolerance<sup>3</sup>. Tr-1. 77.

26. The discrepancy in usage at the Service Address was not attributable to the age of the ERT head, because the ERT head was still functioning and providing readings. Tr-1. 77.

27. PGW issued a bill for previously unbilled usage based on the BTUs of the single gas appliance (house heater) found at the Service Address. Tr-1. 50; PGW Exh. 5.

28. On November 20, 2015, the Complainant was billed for unauthorized usage from August 8, 2006 to November 17, 2017 in the amount of \$6,100.85. Tr-1. 53, 54; PGW Exh. 5, 6.

29. PGW performed a gas usage analysis for the Service Address for the timeframe from June 19, 1997 to November 17, 2015. Tr-1. 56-58; PGW Exh. 7.

30. PGW found the following in the gas usage analysis:

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<sup>3</sup> See 52 Pa.Code §59.21(h).

Dates From	To	Total Usage in CCF <sup>4</sup>	CFDD <sup>5</sup>
6/19/1997	6/19/1998	949	16.1
6/19/1998	6/11/1999	1030	18.9
6/11/1999	6/15/2000	928	15.6
6/15/2000	6/19/2001	963	14.6
6/19/2001	6/18/2002	802	14.5
6/18/2002	6/17/2003	1092	15.7
6/17/2003	6/17/2004	810	11.0
6/17/2004	6/16/2005	591	6.1
6/16/2005	6/5/2006	1050	18.2
6/5/2006	6/20/2007	455	3.2
6/20/2007	6/18/2008	482	4.2
6/18/2008	6/18/2009	352	1.1
6/18/2009	6/17/2010	323	0.5
6/17/2010	6/17/2011	360	1.3
6/17/2011	6/19/2012	524	6.1
6/19/2012	6/18/2013	190	-2.6
6/18/2013	6/18/2014	241	-1.3
6/18/2014	6/17/2015	274	-0.6
6/17/2015	11/17/2015	50	-22.1

PGW Exh. 7.

31. The meter was last exchanged at the Service Address in 1993. Tr-1. 61.

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<sup>4</sup> CCF = 100 cubic feet

<sup>5</sup> CFDD = cubic feet of gas used per degree day

32. On April 11 and 12, 2017, Nicholas Simeo, a Field Supervisor in the Revenue Protection Unit, visited the Service Address to conduct a further investigation of the premises. Tr-2. 10-11.

33. On April 11, 2017, Mr. Simeo was able to access the basement and first floor of the Service Address. Tr-2. 12.

34. Mr. Simeo found both cast iron and electric radiators on the first floor. Tr-2. 12.

35. Mr. Simeo found that the first floor tenant has access to the thermostat on the first floor. Tr-2. 12.

36. Mr. Simeo also rechecked the basement and found a gas house heater and electric hot water heater. Tr-2. 15-16.

37. Mr. Simeo also found that the meter set was still secured. Tr-2. 16.

38. On April 12, 2017, Mr. Simeo was able to access the second floor of the Service Address. Tr-2. 20.

39. Mr. Simeo verified that there were both cast iron and electric radiators on the second floor as well as an electric stove. Tr-2. 20.

40. Mr. Simeo found there was no thermostat on the second floor. Tr-2. 30.

41. Mr. Jose Torres resided at the Service Address as first floor tenant from approximately 2014 to February 2017. Tr-2. 32, 56-57.

## 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. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 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).

### Tampering Allegations

During the hearing, the Complainant denied tampering with the utility service at the Service Address. Tr-1. 27. The Complainant suggested that the tampering took place before he had purchased the Service Address. Tr-1. 21. The Complainant further argued that he converted the Service Address to electric, specifically an electric hot water heater and electric heaters. Tr-1. 22, 25. The Complainant acknowledged there was a gas house heater at the Service Address, but contends that he kept it at a certain temperature and the tenants were not allowed to adjust it. Tr-1. 22, 25. However, the Respondent asserts that Mr. Kuebler was the responsible party because he was customer of record and the owner of the Service Address and the service was properly turned off by PGW when it found evidence of tampering of the meter.

To dispute the allegations of the Complainant, PGW presented the testimony of Field Service Technician, Brandon Cooper. On November 17, 2015, Mr. Cooper went to the Service Address on a usage discrepancy investigation. Tr-1. 30; PGW Exh. 1. Mr. Cooper found the gas on at the Service Address. Tr-1. 30; PGW Exh. 1. Mr. Cooper removed the meter from the Service Address because he found that the red caps were missing from the ERT head. Tr-1. 31, 32; PGW Exh. 1. Mr. Cooper shut off the gas service with locking plugs and a bike lock on the meter valve. Tr-1. 30; PGW Exh. 1. Mr. Cooper found an operational gas house heater that was 114,000 BTUs. Tr-1. 30-31; PGW Exh. 1.

Richard Lipscomb, a Supervisor in Field Service with the Revenue Protection Unit also testified and was present at the Service Address on November 17, 2015. Tr-1. 70, 71. Mr. Lipscomb observed that the red caps were missing and there was unusual wear on the screws on the ERT head. Tr-1. 71-72. Mr. Lipscomb noted that he and Mr. Cooper were not able to gain access to the first and second floor of the Service Address on November 17, 2015, to check for other gas appliances in the units. Tr-1. 31; PGW Exh. 1.

Mr. Lipscomb testified that the red caps are to prevent tampering with the meter and cannot be replaced once removed. Tr-1. 72. He also indicated that the unusual wear on the screws were indicative of the screws being removed and retightened. Tr-1. 72. Mr. Lipscomb also explained that if the ERT head is dislodged, it will stop recording the gas that passed through the meter. Tr-1. 73. If the ERT head is reengaged with the meter, it will start recording gas that passed through the meter. Tr-1. 73.

Further, Mr. Lipscomb indicated that on November 19, 2015, the meter from the Service Address was tested with a Manual Read of 6000, an Auto Read of 6001, a Tilt Tamper of 207, a Magnetic Tamper of zero, and the drive was a two-foot drive. Tr-1. 75; PGW Exh. 8. Mr. Lipscomb explained that tilt tamper measures any time that the ERT head is dislodged and tilts 60 degrees. Tr-1. 76. Mr. Lipscomb also testified that the manual and auto reads on the meter were within 1.18 cubic feet and are within the two percent tolerance. Tr-1. 77. Lastly, Mr. Lipscomb stated that the discrepancy in usage at the Service Address was not attributable to the age of the ERT head, because the ERT head was still functioning and providing readings. Tr-1. 77.

PGW also presented the testimony of Tiffany Jones, a Customer Review Officer. Ms. Jones testified that the Complainant established utility service with PGW in his name at the Service Address in 2006. Tr-1. 56; PGW Exh. 7. Ms. Jones testified that from June 24, 2010 to November 16, 2015, PGW made 13 attempts to contact the Complainant and access the meter at the property to perform a meter exchange. Tr-1. 39-40, 48; PGW Exh. 3. She also indicated that PGW mailed correspondence on March 25, 2013, September 15, 2014, September 23, 2014 and October 14, 2015 to the Complainant stating that it needed to gain access to the property to exchange the meter<sup>6</sup>. Tr-1. 48-49; PGW Exh. 4. Ms. Jones noted there was no curb valve at the Service Address so PGW needed access to the property in order to terminate service. Tr-1. 49.

Ms. Jones testified that PGW issued a bill for previously unbilled usage based on the BTUs of the gas appliance (house heater) found at the Service Address. Tr-1. 50; PGW Exh.

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<sup>6</sup> The notices sent to the Complainant also indicated that if he failed to provide access to the meter that his service may be terminated.

5. On November 20, 2015, the Complainant was billed for unauthorized usage from August 8, 2006 to November 17, 2015 in the amount of \$6,100.85. Tr-1. 53, 54; PGW Exh. 5, 6. Ms. Jones indicated that PGW performed a gas usage analysis for the Service Address for the timeframe from June 19, 1997 to November 17, 2015. Tr-1. 56-58; PGW Exh. 7. PGW found the following in the gas usage analysis:

Dates From	To	Total Usage in CCF <sup>7</sup>	CFDD <sup>8</sup>
6/19/1997	6/19/1998	949	16.1
6/19/1998	6/11/1999	1030	18.9
6/11/1999	6/15/2000	928	15.6
6/15/2000	6/19/2001	963	14.6
6/19/2001	6/18/2002	802	14.5
6/18/2002	6/17/2003	1092	15.7
6/17/2003	6/17/2004	810	11.0
6/17/2004	6/16/2005	591	6.1
6/16/2005	6/5/2006	1050	18.2
6/5/2006	6/20/2007	455	3.2
6/20/2007	6/18/2008	482	4.2
6/18/2008	6/18/2009	352	1.1
6/18/2009	6/17/2010	323	0.5
6/17/2010	6/17/2011	360	1.3
6/17/2011	6/19/2012	524	6.1
6/19/2012	6/18/2013	190	-2.6
6/18/2013	6/18/2014	241	-1.3
6/18/2014	6/17/2015	274	-0.6
6/17/2015	11/17/2015	50	-22.1

<sup>7</sup> CCF = 100 cubic feet

<sup>8</sup> CFDD = cubic feet of gas used per degree day

PGW Exh. 7. Ms. Jones noted that the meter was last exchanged at the Service Address in 1993. Tr-1. 61.

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.”

Further, the Commission’s regulations indicate that as a condition of restoring service to a customer, the public utility can require the payment of the outstanding balance and the four-year statute of limitations does not apply to instances of fraud or theft. 52 Pa.Code § 56.191(d).

While the Complainant contends that he did not tamper with the meter and the meter failed to work properly due to its age, I am not persuaded by his testimony. The Complainant has owned the Service Address since April 2004 and established service in his name at the Service Address in 2006. The Complainant also acknowledged that there was a gas house heater in the Service Address, which was used to heat the premises. Mr. Cooper and Mr. Lipscomb established that the red caps were missing from the meter which are an anti-tampering device. Further, there was evidence of unusual wear on the screws attaching the ERT head to the meter. Moreover, Mr. Lipscomb testified that the tilt tamper count was 207 and that happens when the ERT head is removed and tilted 60 degrees. Finally, Mr. Lipscomb testified that the ERT head was still functioning and sending readings.

While the Complainant contends that the Service Address was converted to electric, including electric heaters and an electric water heater, the Complainant has not adequately established when this conversion took place. The Complainant did not present any evidence beyond his testimony. His own testimony indicates that the conversion took place five years ago. Tr-1. 25. However, he did not present any receipts or other documentation to establish specifically when the conversion took place. “Mere bald assertions . . . do not constitute evidence.” *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987); *Mid-Atlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm’n*, 746

A.2d 1196, 1200 (Pa.Cmwlth. 2000); see also, *Steffy's Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, R-00994808, (Opinion and Order entered March 3, 2000). The Complainant also acknowledged that the gas house heater remained in use even after this conversion took place. Therefore, the Complainant was not able to meet his burden of proof in this matter.

Further, PGW presented a gas usage analysis which established that usage dropped significantly after service was established in Mr. Kuebler's name. PGW presented the testimony of the technician and supervisor who determined that there was tampering. PGW also presented testimony and evidence that the Complainant was billed for unauthorized usage based on the BTUs of the gas house heater, which was in use at the Service Address from August 8, 2006 to November 17, 2015. PGW also produced evidence that showed the meter, specifically the ERT head, did not fail and was transmitting readings, and that there was evidence, in terms of the tilt tamper count, which established that the ERT head was dislodged from the meter and tilted 60 degrees.

Therefore, since PGW was able to demonstrate that there was tampering at the Service Address because of the physical evidence of tampering on the meter and the tilt tamper count, I conclude that there was tampering with the service while the Complainant had service in his name at the Service Address, and that PGW had grounds to immediately terminate his service on November 17, 2015 for tampering. The Company did nothing wrong charging the Complainant for the unauthorized usage. As such, the Complainant is responsible for the unauthorized usage from August 8, 2006 to November 17, 2015, in the amount of \$6,100.85. Accordingly, the Complainant's Complaint must be 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. As a condition of restoring service to a customer, the public utility can require the payment of the outstanding balance and the four-year statute of limitations does not apply to instances of fraud or theft. 52 Pa.Code § 56.191(d).

6. The Complainant failed to meet his burden of demonstrating that there was no tampering at the Service Address.

7. The Complainant failed to meet his burden of establishing that the Company erred in billing him for unbilled usage at the Service Address from August 8, 2006 to November 17, 2015 based on the gas appliance present at the premises.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Jamie Kuebler against Philadelphia Gas Works at Docket No. C-2016-2567705 is denied and dismissed;

