

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lorenzo Henderson	:	
	:	
v.	:	F-2017-2609248
	:	
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 determined that there was theft of service when there was evidence of tampering or that it erred in billing him for unbilled usage at the Service Address.

HISTORY OF THE PROCEEDING

On May 30, 2017, Lorenzo Henderson (Complainant or Mr. Henderson) 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 alleging that he had stolen gas service. As relief, the Complainant requested that any theft charges be removed from his account.

This matter is a timely appeal of a decision from the Bureau of Consumer Services (BCS) dated May 10, 2017 at Case No. 3505430 which dismissed the informal complaint of the Complainant.

On June 29, 2017, Respondent filed an Answer indicating that the Complainant's service was initially terminated on August 7, 2009 due to non-payment. The Respondent asserts that on February 20, 2017 it visited the Service Address and found the gas on and again shut off service. The Respondent alleges that on March 6, 2017, it found natural gas at the head of service and outlet as well as other signs of tampering. The Respondent indicates that it assessed the Complainant \$3,486.31 in unauthorized usage charges.

By Hearing Notice dated July 12, 2017, a hearing was scheduled for Thursday, September 14, 2017 at 10:00 a.m., and the matter was assigned to me.

On August 29, 2017, I 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.

The hearing convened as scheduled on September 14, 2017. Complainant appeared *pro se* and testified. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Jessica Glace, a Customer Review Officer, and Kimberly Cowan, a Field Service Technician. Respondent offered five exhibits that were admitted into the record.

The hearing resulted in a transcript with a total of 40 pages. The record closed on October 16, 2017, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Lorenzo Henderson.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Service Address is 123 Wyneva Street, Philadelphia, Pennsylvania 19144 (Service Address). Tr. 7.
4. The Complainant owns the Service Address. Tr. 9.
5. The Complainant bought the Service Address on May 6, 2008. Tr. 9, 34; PGW Exh. 3.
6. On December 31, 2003, the Complainant established utility service with PGW in his name at the Service Address. Tr. 32; PGW Exh. 2.
7. The Complainant's gas service at the Service Address was terminated for non-payment on August 7, 2009. Tr. 19, 32-33; PGW Exh. 1, 2, 4.
8. On October 2, 2011, Kimberly Cowan, field service technician, went to the Service Address to check a gas leak and found the gas on and left it off with a bike lock at the meter and at the curb valve. Tr. 21; PGW Exh. 1.
9. On February 20, 2017, when PGW was conducting a curb valve safety recheck, it found the gas on at the Service Address when it was supposed to be off. Tr. 18; PGW Exh. 1.
10. On March 6, 2017, Kimberly Cowan, Field Service Technician, went to the Service Address on an unbilled usage investigation. Tr. 14-15; PGW Exh. 1.

11. Ms. Cowan found the gas off at the Service Address. Tr. 18; PGW Exh. 1.
12. Ms. Cowan found a natural gas reading of 49 at the head of service which is the carrier pipe that brings gas into the Service Address. Tr. 24; PGW Exh. 1.
13. There should have been no gas reading at the head of service because the service was supposed to be shut off since August 2009. Tr. 24.
14. Ms. Cowan removed the meter from the Service Address because she found foreign pipe dope¹ on the head of service and found natural gas present at the outlet side and head of service. Tr. 14; PGW Exh. 1.
15. Ms. Cowan shut off the gas service with locking plugs and locked at the curb valve with an expander. Tr. 14; PGW Exh. 1.
16. Ms. Cowan found a gas house heater, gas water heater and gas range. Tr. 15; PGW Exh. 1.
17. PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 35; PGW Exh. 5.
18. The historical usage analysis for the Service Address was from October 31, 2007 to September 30, 2008 when the Complainant was the customer of record. Tr. 36; PGW Exh. 5.
19. The Complainant was billed for unauthorized usage from October 2, 2011 to February 20, 2017 in the amount of \$3,486.31. Tr. 37; PGW Exh. 5.

¹ Foreign pipe dope is a sealant used to prevent leaks from pipes that is not used by PGW. Tr. 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).

Tampering Allegations

The Complainant denied tampering with the utility service at the Service Address. The Complainant acknowledged that he owns the Service Address and that gas service was turned off previously at the premises. Tr. 9, 10. However, the Respondent asserts that Mr. Henderson was the responsible party because he was customer of record and the owner of the Service Address and the service had been previously turned off at the Service Address in 2009 and should have been off when the premises was checked in February 2017.

To dispute the allegations of the Complainant, PGW presented the testimony of Field Service Technician, Kimberly Cowan. On October 2, 2011, Ms. Cowan went to the Service Address to check a gas leak and found the gas on and left it off with a bike lock at the meter and at the curb valve. Tr. 21; PGW Exh. 1. Then on March 6, 2017, Ms. Cowan went back to the Service Address on an unbilled usage investigation. Tr. 14-15; PGW Exh. 1. Ms. Cowan found the gas off at the Service Address. Tr. 18; PGW Exh. 1. Ms. Cowan found a natural gas reading of 49 at the head of service which is the carrier pipe that brings gas into the Service Address. Tr. 24; PGW Exh. 1. There should have been no gas reading at the head of service because the service was supposed to be shut off since August 2009. Tr. 24. Ms. Cowan removed the meter from the Service Address because she found foreign pipe dope on the head of service and found natural gas present at the outlet side and head of service. Tr. 14; PGW Exh. 1. Ms. Cowan shut off the gas service with locking plugs and curbed at the curb valve with an expander. Tr. 14; PGW Exh. 1. Ms. Cowan found a gas house heater, gas water heater and gas range. Tr. 15; PGW Exh. 1.

PGW also presented the testimony of Jessica Glace, a Senior Customer Review Officer. Ms. Glace testified that the Complainant established utility service with PGW in his

name at the Service Address on December 31, 2003. Tr. 32; PGW Exh. 2. The Complainant's gas service at the Service Address was terminated for non-payment on August 7, 2009. Tr. 19, 32-33; PGW Exh. 1, 2, 4. On February 20, 2017, when PGW was conducting a curb valve safety recheck, it found the gas on at the Service Address when it was supposed to be off. Tr. 18; PGW Exh. 1.

PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 35; PGW Exh. 5. The historical usage analysis for the Service Address was from October 31, 2007 to September 30, 2008 when the Complainant was the customer of record. Tr. 36; PGW Exh. 5. The Complainant was billed for unauthorized usage from October 2, 2011 to February 20, 2017 in the amount of \$3,486.31. Tr. 37; PGW Exh. 5.

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 indicated 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 had nothing to do with the tampering, I am not persuaded by his testimony. “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 established service in his name at the Service Address in December 2003 and has owned the Service Address since May 2008. The Complainant also acknowledged that there were gas appliances at the Service Address, including a house heater, hot water heater and range. Tr. 11.

On March 6, 2017, Ms. Cowan established that on there was a natural gas reading of 49 at the head of service which is the carrier pipe that brings gas into the Service Address. Tr. 24; PGW Exh. 1. Ms. Cowan also testified that there should have been no gas reading at the head of service because the service was supposed to be shut off since August 2009. Tr. 24. Ms. Cowan also indicated that she found foreign pipe dope on the head of service, which is a sealant that PGW does not use. Tr. 14, 28; PGW Exh. 1. PGW also presented testimony and evidence that the Complainant was billed for unauthorized usage based on the historical usage at the Service Address during a time period when the Complainant was the customer of record.

Therefore, since PGW was able to demonstrate that there was tampering at the Service Address based on the natural gas reading and foreign pipe dope, I conclude that there was tampering with the service while the Complainant owned the Service Address, and that PGW had grounds to immediately terminate his service on February 20, 2017 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 October 2, 2011 to February 20, 2017 in the amount of \$3,486.31. 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 unauthorized usage at the Service Address from October 2, 2011 to February 20, 2017 based on historical usage at the premises.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Lorenzo Henderson against Philadelphia Gas Works at Docket No. F-2017-2609248 is denied and dismissed.

2. That the record at Docket No. F-2017-2609248 be marked closed.

Date: January 3, 2018

/s/
Marta Guhl
Administrative Law Judge