

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alpha Barry	:	
	:	
v.	:	F-2017-2618739
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
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 for theft of service when there was evidence of meter tampering.

HISTORY OF THE PROCEEDING

On July 27, 2017, Alpha Barry (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW or Respondent) denying that he tampered with his meter and requesting his service be restored.

This matter is a timely appeal of a decision from the Bureau of Consumer Services (BCS) dated June 22, 2017, at Case No. 3536229 which dismissed the informal complaint of the Complainant.

On August 31, 2017, PGW filed an Answer to the Complainant's complaint. In its Answer, PGW asserts that on June 14, 2017, the Complainant's service was terminated and the meter removed due to the discovery of a tampered meter bypass. Further, on June 21, 2017, PGW billed the Complainant for the bypass charge from November 30, 2015 to June 14, 2017 in the amount of \$2,398.53.

A Hearing Notice dated September 13, 2017, notified the parties that an initial hearing was scheduled for October 23, 2017.

A Prehearing Order was issued on September 22, 2017, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

The hearing convened as scheduled on October 23, 2017. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered four exhibits, all of which were entered into the record. Laureto A. Farinas, Esquire represented the Respondent, and presented the testimony of Jessica Glace, a Senior Customer Review Officer, and Michael Trainor, a Field Service Technician. The Respondent offered seven exhibits, all of which were entered into the record.

The record closed on November 13, 2017 upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Alpha Barry.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant resides at 7202 Rupert Street, Philadelphia, Pennsylvania 19149 (Service Address). Tr. 8.

4. The Service Address is a two-story house with three bedrooms, basement, and garage. Tr. 27, 30.
5. The gas appliances used at the Service Address are the house heater, water heater, and stove. Tr. 30, 105.
6. The meter is located in the basement. Tr. 18.
7. The Complainant rents the Service Address and is the sole tenant. Tr. 26-27, 29.
8. Jessica Glace is a Senior Customer Review Officer at PGW. Tr. 38.
9. On October 14, 2010, PGW technician, Michael Masciarelli, went to the Service Address on a “Turn On” order but was unable to turn on service because there was a wall blocking access to the meter. Tr. 45; PGW Exh. 1.
10. On October 21, 2010, the Complainant’s service was turned on. PGW Exh. 1.
11. On July 21, 2014, the Complainant’s service was shut off. Tr. 46-47; PGW Exh. 1.
12. On October 10, 2014, the Complainant was enrolled in PGW’s Customer Responsibility Program (CRP) and his service was turned on again. Tr. 49; PGW Exh. 1.
13. On June 14, 2017, Michael Trainor, Field Service Technician, went to the Service Address on a usage discrepancy investigation. Tr. 49, 94-95; PGW Exhs. 1, 3.
14. Mr. Trainor found the gas on at the Service Address. Tr. 95; PGW Exhs. 1, 3.

15. PGW uses an encoder receiver transmitter (ERT) to measure gas usage at a service address. Tr. 97-98.

16. The ERT is screwed onto the meter and the screws are covered with red security caps to prevent tampering. Tr. 97-98.

17. If the ERT is engaged with the meter, it will measure gas usage. Tr. 99-100.

18. If the ERT is pulled away from the meter, it will not measure any gas usage. Tr. 98-100.

19. During his investigation, Mr. Trainor found the red security caps on the ERT were removed and the screws were loose. Tr. 96, 107; PGW Exhs. 1, 3.

20. Mr. Trainor shut off the gas service by removing the meter, installing locking plugs, and installing expanders at the curb valve. Tr. 102-103; PGW Exh. 3.

21. PGW issued a bill for previously unbilled usage based on the BTUs of the appliances (house heater, water heater, and stove) found at the Service Address. Tr. 62-66; PGW Exh. 4.

22. PGW performed a historical gas usage analysis for the Service Address for the timeframe from July 1, 2013 through June 2, 2014. Tr. 62; PGW Exh. 4.

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

Historical Usage		Compared To	Bypass Usage	
Read Date	Total Usage in CCF¹		Read Date	Total Usage in CCF
			12/1/2015	33
			1/4/2016	14
			2/2/2016	27
			3/2/2016	16
			4/2/2016	35
			5/3/2016	9
			6/1/2016	11
7/1/2013	12		6/30/2016	1
7/31/2013	10		8/2/2016	4
8/30/2013	12		8/31/2016	2
10/1/2013	24		9/30/2016	1
10/30/2013	80		10/31/2016	12
11/29/2013	172		12/1/2016	10
12/31/2013	220		1/4/2017	12
1/31/2014	251		2/2/2017	17
3/4/2014	236		3/3/2017	0
4/2/2014	168		4/4/2017	26
5/1/2014	95		5/2/2017	7
6/2/2014	32		6/1/2017	2
			6/15/2017	1

Tr. 62-63; PGW Exhs. 2, 4.

¹ CCF = 100 cubic feet. Tr. 52.

24. The meter was last exchanged at the Service Address on October 21, 2010. PGW Exh. 1.

25. The Complainant has not changed any of his usage habits nor made any effort to conserve gas usage during the time he has received service. Tr. 36.

26. On June 21, 2017, the Complainant was billed for unauthorized usage from November 30, 2015 to June 14, 2017 in the amount of \$2,398.53. Tr. 66; PGW Exhs. 1, 4.

27. The Complainant's outstanding bill for gas usage prior to the bypass period is \$7,952.39. Tr. 60.

28. The total balance owed by the Complainant is \$10,350.92. Tr. 60.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he is entitled to the requested relief. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation*

Bd. of Review, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlt. 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. Cmwlt. 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.Cmwlt. 2001).

Meter Tampering

In this case, the Respondent terminated the Complainant's service upon discovery of meter tampering. The Complainant denies that he tampered with his meter and requests his service be restored.

Commission Regulations are clear that "[a] public utility may immediately terminate service for ... [t]ampering with meters or other public utility equipment." 52 Pa.Code § 56.98(a)(3).

Here, the Complainant rents the Service Address and is the sole tenant. On October 21, 2010, PGW exchanged the Complainant's meter and turned on his service. PGW next visited the Service Address on July 21, 2014 to shut off the Complainant's service for non-payment. PGW returned on October 10, 2014 to turn the Complainant's service back on. PGW did not visit the Service Address again until June 14, 2017, when Michael Trainor, Field Service

Technician, went to the Service Address on a usage discrepancy investigation. During that investigation, Mr. Trainor found the gas on, the red security caps on the ERT were removed, and the screws loose. Mr. Trainor explained that PGW uses an ERT to measure gas usage at a service address. The ERT is screwed onto the meter and the screws are covered with red security caps to prevent tampering. If the ERT is pulled away from the meter, it will not measure any gas usage, but once it is reengaged with the meter, it will measure gas usage again. As a result, a common way to tamper with a meter is to periodically pull the ERT away from the meter and then reengage it to make it appear that you are using less gas. However, this would leave the user with missing red caps and loose screws, which is exactly what Mr. Trainor found with the Complainant's ERT. Consequently, Mr. Trainor shut off the gas service by removing the meter, installing locking plugs, and installing expanders at the curb valve.

In addition to the physical evidence of tampering, PGW also offered a gas usage comparison that showed how the Complainant's gas usage dramatically reduced during the same months for different years without explanation other than tampering. For example, during January, February, and March of 2014, the Complainant used 251, 236, and 158 CCFs of gas respectively, compared with only 17, 0, and 26 CCFs of gas for those same three months in 2016. During cross-examination, the Complainant confirmed that he has not changed any of his usage habits nor made any effort to conserve gas usage. Tr. 36. Thus, only a faulty meter or tampered meter could account for such a reduction in measured usage. However, if these reduced readings were due to a faulty meter, there would be no physical evidence of tampering like that found by Mr. Trainor. Consequently, I come to the same conclusion as PGW that the reduced readings are the result of meter tampering.

The Complainant did not present any evidence to explain or contradict the convincing evidence and testimony provided by the Respondent. Essentially, the Complainant's case rests entirely upon his assertion that he is not a thief and he did not tamper with the meter. Tr. 135-136. However, "[m]ere bald assertions ... do not constitute evidence." *MidAtlantic Power Supply Association of Pennsylvania v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000)(citing *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d

12, 14 (Pa. 1987). Thus, without more, the Complainant was unable to meet his burden of proof that PGW wrongly terminated his service for tampering with the meter.

Bypass Charges

Additionally, PGW billed the Complainant for his previously unbilled gas usage pursuant to the Commission's Regulations at 52 Pa. Code § 56.12, which read in pertinent part:

§ 56.12. Meter reading; estimated billing; customer readings.

Except as provided in this section, a public utility shall render bills based on actual meter readings by public utility company personnel.

...

(5) Remote reading devices for water, gas and electric public utilities.

A public utility may render a bill on the basis of readings from a remote reading device under the following conditions:

- (i) When a gas, electric or water public utility uses readings from a remote reading device to render bills, the public utility shall obtain an actual meter reading at least once every 5 years to verify the accuracy of the remote reading device. If the customer of record at the dwelling changes during the 5-year period between actual meter readings, the public utility shall make a bona fide attempt to schedule an appointment with the departing customer and, if necessary, the new occupant, to secure an actual meter reading.
- (ii) **When the actual meter reading establishes that the customer was underbilled due to an error in the registration of the remote reading device, the public utility may render a bill for the uncollected amount.** If the rebilling exceeds the otherwise normal estimated bill for the billing period during which the bill is issued by at least 50% or at least \$50, the public utility shall comply with § 56.14 (relating to previously unbilled public utility service).

(Emphasis added).

In this case, since the Respondent did not have accurate meter readings due to meter tampering, PGW issued a bill for previously unbilled usage based on the BTUs of the appliances (house heater, water heater, and stove) found at the Service Address combined with a historical gas usage analysis for the timeframe of July 1, 2013 through June 2, 2014. As a result, the Complainant was appropriately billed for unauthorized usage from November 30, 2015 to June 14, 2017 in the amount of \$2,398.53.

Finally, PGW is entitled to require the payment of the Complainant's entire outstanding balance as a condition to restore service. See 52 Pa.Code § 56.191(d).² The Complainant's bill for gas usage prior to the bypass period is \$7,952.39, therefore, his total outstanding bill is \$10,350.92 (7,952.39 + 2,398.53).

Conclusion

Based on the foregoing, I conclude the Complainant was unable to meet his burden of proof that PGW wrongly terminated his service for tampering with the meter, and PGW was entitled to bill the Complainant for unauthorized usage from November 30, 2015 to June 14, 2017, in the amount of \$2,398.53. 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).

² 52 Pa.Code §56.191(d): *Payment of outstanding balance at premises as a condition to restore service.* 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.

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. When the actual meter reading establishes that the customer was underbilled due to an error in the registration of the remote reading device, the public utility may render a bill for the uncollected amount. 52 Pa. Code § 56.12(5)(ii).

6. 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).

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

8. The Complainant failed to meet his burden of establishing that the Company erred in billing him for unbilled usage at the Service Address from November 30, 2015 to June 14, 2017, based on the gas appliances present at the premises.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Alpha Barry against Philadelphia Gas Works at Docket No. F-2017-2618739 is dismissed; and
2. That the record at Docket No. F-2017-2618739 be marked closed.

Date: January 3, 2018

/s/
F. Joseph Brady
Administrative Law Judge