

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Carlton V. Lane	:	
	:	
v.	:	F-2017-2610760
	:	
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 June 12, 2017, Carlton V. Lane (Complainant or Mr. Lane) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company) 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 an appeal of a decision from the Bureau of Consumer Services (BCS) dated April 25, 2017, at Case No. 3498496, which dismissed the informal complaint of the Complainant.

On July 13, 2017, Respondent filed an Answer indicating that the gas service at the Service Address was initially terminated on August 15, 2012, due to non-payment. The Respondent asserts that on December 12, 2016, it conducted a curb valve safety check at the Service Address and found the gas on and again shut off service at the curb valve with an expander. The Respondent alleges that on December 14, 2016, it found natural gas readings at the drip of the water heater and removed the meter from the Service Address. The Respondent indicates that it assessed the Complainant \$7,970.56 for the period from August 15, 2012, to December 12, 2016, in unauthorized usage.

By Hearing Notice dated July 24, 2017, a hearing was scheduled for Friday, September 15, 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 15, 2017. Complainant appeared *pro se* and testified. The Complainant also offered one exhibit which was entered into the record at the hearing. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of Tiffany Jones, a Customer Review Officer; Wilfredo Lopez, a Field Service Technician; and Nicholas Simeo, Supervisor for the Revenue Protection Unit. Respondent offered seven exhibits which were entered into the record.

The hearing resulted in a transcript with a total of 117 pages. The record closed on November 9, 2017, when I received the transcript of the hearing.

## FINDINGS OF FACT

1. The Complainant in this case is Carlton V. Lane.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Service Address is 5458 Arlington Street, Philadelphia, Pennsylvania 19131 (Service Address). Tr. 7.
4. The Complainant owns the Service Address. Tr. 13.
5. The Complainant bought the Service Address on June 11, 1998 with his wife, Lorinda Lane. Tr. 13, 65; PGW Exh. 6.
6. The Complainant's wife established utility service with PGW in her name at the Service Address. Tr. 53; PGW Exh. 2.
7. The gas service at the Service Address was terminated for non-payment on August 15, 2012. Tr. 53; PGW Exh. 7.
8. On August 20, 2012, Complainant contacted PGW on his wife's behalf regarding a payment arrangement. Tr. 53-54; PGW Exh. 7.
9. On August 24, 2012, the Complainant contacted PGW again on his wife's behalf regarding the terms for restoration of service. Tr. 54; PGW Exh. 7.
10. On March 8, 2013, PGW and Complainant's wife entered into an agreement to resolve a formal complaint, which was to restore gas service at the Service Address, but Complainant's wife failed to complete the terms of the agreement and service was not restored. Tr. 56-57; PGW Exh. 7.

11. On December 12, 2016, PGW was at the Service Address for a curb valve safety recheck. Tr. 58; PGW Exh. 7.

12. The PGW technician found the curb valve on and left the gas service off with an expander at the curb valve. Tr. 58; PGW Exh. 7.

13. On December 14, 2016, Wilfredo Lopez, field service technician, went to the Service Address on an unbilled usage investigation. Tr. 86; PGW Exh. 3.

14. Mr. Lopez found the gas off at the Service Address. Tr. 86, 88; PGW Exh. 3.

15. Mr. Lopez found a gas house heater, gas water heater, gas dryer, and gas range. Tr. 87; PGW Exh. 3.

16. Mr. Lopez found a natural gas reading of 50 at the tip of the fuel line to the hot water heater. Tr. 88; PGW Exh. 3.

17. The gas reading indicated that the gas had been used within the last day or two before the reading was obtained. Tr. 89.

18. There should have been no gas reading in the fuel line for the hot water heater because the service was supposed to be shut off since 2012. Tr. 90.

19. Mr. Lopez removed the meter from the Service Address. Tr. 86-87; PGW Exh. 3.

20. Mr. Lopez shut off the gas service with a bike lock and locking plugs and replaced the expander at the curb valve with a newer style. Tr. 90; PGW Exh. 3.

21. Nicholas Simeo is a Supervisor for the Revenue Protection Unit. Tr. 102.

22. On December 22, 2016, the meter removed from the Service Address was tested at PGW's meter shop. Tr. 104; PGW Exh. 7.

23. The manual and Automatic Meter Reader (AMR) reads were in sync. Tr. 104; PGW Exh. 7.

24. The meter had a tilt tamper count of 164 and a magnetic tamper count of zero. Tr. 104; PGW Exh. 7.

25. The tilt tamper count is indicative of the meter being tilted beyond a certain angle which triggers the count. Tr. 105.

26. The wiggler tip of the meter was cut off. Tr. 104; PGW Exh. 7.

27. PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 63; PGW Exh. 4.

28. The historical usage analysis for the Service Address was from July 14, 2011, to June 14, 2012, when the Complainant's wife, Lorinda Lane, was the customer of record. Tr. 63; PGW Exh. 4.

29. On December 28, 2016, the Complainant was billed for unauthorized usage from August 15, 2012, to December 12, 2016, in the amount of \$7,970.56. Tr. 60, 62; PGW Exh. 1 and 4.

30. The Complainant made a payment to the account in the amount of \$8,093.79 on December 28, 2016, which included the bill for unauthorized usage, and a reconnection fee of \$123.23. Tr. 60-61; PGW Exh. 1.

31. The Complainant's current account balance at the time of the hearing was zero. Tr. 61; PGW Exh. 1.

## 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

The Complainant denied tampering with the utility service at the Service Address, indicating that he left the Service Address in 2011 and did not return until 2016. Tr. 8, 13, 15. The Complainant acknowledged that he owns the Service Address. Tr. 13. The Respondent asserted that Mr. Lane was the responsible party because he is the owner of the Service Address and the service had been previously turned off at the Service Address in 2012 and should have been off when the premises was checked in December 2016.

To dispute the allegations of the Complainant, PGW presented the testimony of Field Service Technician, Wilfredo Lopez. On December 14, 2016, Mr. Lopez went to the Service Address on an unbilled usage investigation. Tr. 86; PGW Exh. 3. Mr. Lopez found the gas off at the Service Address. Tr. 86, 88; PGW Exh. 3. Mr. Lopez found a gas house heater, gas water heater, gas dryer, and gas range. Tr. 87; PGW Exh. 3. Mr. Lopez found a natural gas reading of 50 at the tip of the fuel line to the hot water heater. Tr. 88; PGW Exh. 3. Mr. Lopez testified that the gas reading indicated that the gas had been used within the last day or two before the reading was obtained. Tr. 89. Mr. Lopez also testified that there should have been no gas reading in the fuel line for the hot water heater because the service was supposed to be shut off since 2012. Tr. 90. Mr. Lopez removed the meter from the Service Address. Tr. 86-87; PGW Exh. 3. Mr. Lopez shut off the gas service with a bike lock and locking plugs and replaced the expander at the curb valve with a newer style. Tr. 90; PGW Exh. 3.

PGW also presented the testimony of Nicholas Simeo, who is a Supervisor for the Revenue Protection Unit. Tr. 102. Mr. Simeo testified that on December 22, 2016, the meter removed from the Service Address was tested at PGW's meter shop. Tr. 104; PGW Exh. 7. Mr. Simeo noted that the manual and Automatic Meter Reader (AMR) reads were in sync. Tr. 104;

PGW Exh. 7. He also indicated that the meter had a tilt tamper count of 164 and a magnetic tamper count of zero. Tr. 104; PGW Exh. 7. Mr. Simeo testified that the tilt tamper count is indicative of the meter being tilted beyond a certain angle which triggers the count. Tr. 105. He also noted that the wiggler tip of the meter was cut off. Tr. 104; PGW Exh. 7.

PGW presented the testimony of Tiffany Jones, a Senior Customer Review Officer. Ms. Jones testified that the Complainant's wife, Lorinda Lane, established utility service with PGW in her name at the Service Address. Tr. 32; PGW Exh. 2. The gas service at the Service Address was terminated for non-payment on August 15, 2012. Tr. 53; PGW Exh. 7. On December 12, 2016, 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. 58; PGW Exh. 7.

PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 63; PGW Exh. 4. The historical usage analysis for the Service Address was from July 14, 2011 to June 14, 2012 when the Complainant's wife was the customer of record. Tr. 63; PGW Exh. 4. On December 28, 2016, the Complainant was billed for unauthorized usage from August 15, 2012 to December 12, 2016 in the amount of \$7,970.56. Tr. 60, 62; PGW Exh. 1 and 4. The Complainant made a payment to the account in the amount of \$8,093.79 on December 28, 2016, which included the bill for unauthorized usage, and a reconnection fee of \$123.23. Tr. 60-61; PGW Exh. 1. The Complainant's current account balance at the time of the hearing was zero. Tr. 61; PGW Exh. 1.

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 there is no four-year statute of limitations that applies to instances of fraud or theft. 52 Pa.Code § 56.191(d).

While the Complainant only offered his testimony to demonstrate that he had nothing to do with the meter tampering or theft of service, I am not persuaded by his testimony. It is well settled, “[m]ere bald assertions ... do not constitute evidence.” *Mid-Atlantic 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*, 516 Pa. 75, 532 A.2d 12 (1987); see also, *Steffy’s Pattern Shop v. Frontier Communications of Pennsylvania, Inc.*, Docket No. R-00994808 (Opinion and Order entered March 3, 2000). The Complainant has owned the Service Address since June 1998. There were gas appliances at the Service Address, including a house heater, hot water heater, a dryer and range. Mr. Lopez found a natural gas reading of 50 at the tip of the fuel line to the hot water heater. Tr. 88; PGW Exh. 3. Mr. Lopez testified that the gas reading indicated that the gas had been used within the last day or two before the reading was obtained. Tr. 89. Mr. Lopez also testified that there should have been no gas reading in the fuel line for the hot water heater because the service was supposed to be shut off since 2012. Tr. 90. Further, Mr. Simeo indicated that the meter had a tilt tamper count of 164 and a magnetic tamper count of zero. Tr. 104; PGW Exh. 7. Mr. Simeo testified that the tilt tamper count is indicative of the meter being tilted beyond a certain angle which triggers the count. Tr. 105. He also noted that the wiggler tip of the meter was cut off. Tr. 104; PGW Exh. 7. PGW also presented testimony and evidence to demonstrate that the Complainant was billed for unauthorized usage based on the historical usage at the Service Address during a time period when the Complainant’s wife 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 tilt tamper count, I conclude that there was tampering with the service while the Complainant owned the Service Address, during the period at issue in this matter, and that PGW had grounds to immediately terminate his service on December 12, 2016, for tampering. As such, the Complainant is responsible for the unauthorized usage from August 15, 2012, to December 12, 2016, in the amount of \$7,970.56. Accordingly, this portion of the Complainant’s Complaint must be dismissed.

## Responsibility for Unauthorized Usage

The Complainant alleged that he should not be responsible for the unauthorized usage. The Complainant asserts that he left the Service Address in 2011 and that his wife left the Service Address in 2012. The Complainant indicated that he did not return to the property until 2016 and had to pay the bill for unauthorized usage in order to have the account for the Service Address placed in his name.

At the hearing, the Complainant testified that he left the Service Address in 2011. Tr. 8, 13. According to Mr. Lane, he lived with his brothers in other parts of the city. Tr. 14. Mr. Lane indicated that his wife and daughter continued to live at the Service Address after he left. Tr. 20-21. Mr. Lane also indicated that he kept the Service Address as his permanent address. Tr. 15. Mr. Lane testified that he returned to the property in 2016 to rehab the Service Address. Tr. 15. Mr. Lane acknowledged that he owns the property with his wife. Tr. 13.

Complainant was unable to support his oral testimony with additional evidence. While he provided a receipt for a hot water heater purchase from October 2016, and a receipt for the inspection of the house heater and hot water heater in December 2016, he was unable to establish that the appliances were not functioning prior to those dates or that his family was not using them. *See* Complainant's Exh. 1. The Complainant's own testimony acknowledges that he owns the Service Address. Mr. Lane was unable to produce any proof beyond his testimony that he lived with his brothers from 2011 to 2016. Mr. Lane also acknowledged that he continued to use the Service Address as his primary address during this timeframe. The Complainant also acknowledged that his family continued to live at the Service Address off and on, and that gas service was under his wife's name.

Section 1407 of the Public Utility Code states in pertinent part:

(d) Payment of outstanding balance at premises. A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there.

(e) Approval. A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the commission.

66 Pa.C.S. § 1407. The Respondent submitted evidence showing that Complainant has owned the Service Address since June 11, 1998. PGW Exh. 6. The Complainant acknowledged that he owns the Service Address. Tr. 13.

Mr. Lane has failed to produce a scintilla of evidence to support his claim that he did not reside at and benefit from the utility services at the Service Address after 2011. On the contrary, there is substantial evidence to support that the Complainant was associated with and responsible for utility service at the Service Address since June 11, 1998. Moreover, the Company billed the Complainant in accordance with Commission regulations for the unauthorized usage. Complainant has failed to carry his burden of proving that Respondent has violated a Commission statute, regulation or order by requiring that he pay the bill for unauthorized usage at the Service Address in order to have the account placed in his name.

For the reasons stated above, I will dismiss this portion of Mr. Lane's present Complaint for failure to carry his burden of proof. As an applicant for utility service at the Service Address, Mr. Lane was liable for the balance accrued in the account in the amount of \$7,970.56.

#### 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. A public utility may also require the payment of any outstanding balance or portion of an outstanding balance if the applicant resided at the property for which service is requested during the time the outstanding balance accrued and for the time the applicant resided there. 66 Pa.C.S. § 1407.

7. A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the commission. 66 Pa.C.S. § 1407.

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

9. The Complainant failed to meet his burden of establishing that the Company erred in billing him for unauthorized usage at the Service Address from August 15, 2012, to December 12, 2016, based on historical usage at the premises.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Carlton V. Lane against Philadelphia Gas Works at Docket No. F-2017-2610760 is denied and dismissed;
2. That the record at Docket No. F-2017-2610760 be marked closed.

Date: February 2, 2018

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/s/  
Marta Guhl  
Administrative Law Judge