

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark Hudgens	:	
	:	
v.	:	F-2017-2623054
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses a formal Complaint filed by Mark Hudgens (Complainant) against Philadelphia Gas Works (PGW or Respondent). Complainant asserts that he was improperly billed by PGW, but Complainant did not prove this by a preponderance of the evidence.

**HISTORY OF THE PROCEEDING**

On September 5, 2017, Complainant filed a formal Complaint alleging that PGW was threatening to shut off his service or had already shut off his service, and that he had been improperly billed for natural gas service. The Complaint is a timely appeal from a determination by the Commission's Bureau of Consumer Services (BCS) at Case No. 3549572.

By Answer filed September 26, 2017, PGW denied the averments in the Complaint.

On October 10, 2017, a hearing Notice was issued setting November 16, 2017, as the date for a telephonic hearing in this case.

On October 27, 2017, a standard form prehearing Order was issued.

On November 16, 2017, a telephonic hearing convened originating from the Commission's office in Harrisburg, Pennsylvania. Complainant was present and offered testimony and one exhibit which was received into evidence: a statement from Tampa Electric marked as C-1. PGW was represented by Graciela Christlieb, Esquire. PGW presented two witnesses: Michael Trainor, a Field Service Technician employed by PGW, and Tiffany Jones, a Senior Customer Review Officer employed by PGW. PGW offered eight exhibits that were received into evidence: PGW-1, a document from Advance Intelligence Mobile Solutions, which is a PGW database; PGW-2, photos of a gas reader and gas meter; PGW-3, a property ownership information document; PGW-4, screen shots of turn-off requests in December, 2007; PGW-5, a Service Order completion form; PGW-6, a customer contact document and related identification; PGW-7, billing calculations for alleged theft of service; and PGW-8, a PGW bill to Complainant.

The record in this case consists of a 67-page transcript and exhibits C-1, and PGW-1 through PGW-8. The record closed on November 22, 2017, with the filing of the transcript.

This matter is now ready for adjudication.

#### FINDINGS OF FACT

1. The Complainant in this case is Mark Hudgens.
2. Complainant resides at 923 Gilham Street, Philadelphia, Pennsylvania, which is the service address relative to this Complaint.

3. The Respondent in this case is Philadelphia Gas Works, a Commission jurisdictional natural gas distribution company that provided natural gas service to the service address above.

4. Natural gas service to the service address was in Complainant's name from 2003 to 2007. Tr. at 8.

5. On December 19, 2007, natural gas service was disconnected at the service address pursuant to Complainant's request. Tr. at 45-46, PGW-5.

6. From March, 2014 to March, 2016, Complainant received service from Tampa Electric at 3325 South Kirkman Road, Apartment 433, Orlando, Florida. Tr. 13-14; Exhibit C-1.

7. Prior to March, 2014, Complainant resided at 923 Gilham Street, Philadelphia, Pennsylvania. Tr. at 14.

8. Since 2003, when he purchased the house at 923 Gilham Street, Philadelphia, Pennsylvania, that home has been Complainant's primary residence and mailing address. Tr. at 17.

9. On July 22, 2017, personnel from PGW went to the service address to conduct a Curb Valve Safety Recheck in order to determine whether the gas had been reconnected at the service address. Tr. at 22; PGW-1.

10. On July 22, 2017, personnel from PGW determined that natural gas service had been reconnected at the service address, and they turned it back off at the curb box. Tr. at 23, 38.

11. On July 25, 2017, an Unbilled Usage Investigation was initiated by PGW, and PGW personnel found that the natural gas service had been reconnected at the service address. Tr. at 24-25.

12. On July 25, 2017, PGW personnel disconnected the natural gas service at the service address, turning it off with a device called an “expander,” which is meant to prevent any further reconnection when there have been incidents of unauthorized reconnection. Tr. at 24; PGW-1.

13. On July 26, 2017, the day after service was disconnected for the second time, this time with the expander to prevent unauthorized reconnection, Complainant came to PGW’s North Philadelphia Business Office and asked that the gas be reconnected. Tr. at 47; PGW-6.

14. On July 28, 2017, PGW conducted a second Unbilled Usage Investigation, at which time the natural gas was found not connected at the service address. Tr. at 26, 40; PGW-1.

15. On July 28, 2017, PGW personnel gained access to the service address and determined that the following gas-using appliances were in the premises: a dryer, a heater, a range, and a water heater. Tr. at 27; PGW-1.

16. During the July 28, 2017 Unbilled Usage Investigation, PGW personnel detected gas use by the appliances at the service address and installed locks to prevent a flex line from being used to supply gas. Tr. at 27-29.

17. In calculating estimated natural gas usage at the service address from December 19, 2007 to July 25, 2017, PGW used Complainant’s historical usage from 2006-2007 to arrive at a calculation, based on actual degree days, to arrive at how much gas would have been used in one year. Tr. at 50-51, PGW-7.

18. The average volume of gas used during the historical usage period was 75.417 ccf (ccf=one hundred cubic feet) per month or 905 ccf per twelve months. PGW-7.

19. Based on estimated usage of 8,814 ccf for the period from December 19, 2007 to July 25, 2017, with a customer charge of \$1,404.00, a commodity charge of \$5,919.84, a Gas Cost Adjustment of minus \$185.26, a distribution charge of \$7,325.31, a WNA charge of \$151.21, and a DSIC charge of 194.53, PGW arrived at a total of \$14,813.63 owed for natural gas service during that period. Tr. at 51, PGW-7.

### DISCUSSION

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S.A. § 332(a). To satisfy this burden, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *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). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *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. Cmwlth. 1984).

In this case, Complainant asserts that he asked that natural gas service be disconnected at his service address in December, 2007. Disconnection was accomplished by PGW on December 19, 2007. Complainant testified that from March, 2014 to March, 2016, he was living in Florida, and he received utility service from Tampa Electric at 3325 South Kirkman Road, Apartment 433, Orlando, Florida. However, Complainant also testified that prior to March, 2014, he was still living at the 923 Gilham Street, Philadelphia, Pennsylvania, service address. Thus, to accept Complainant's testimony, we must accept that he resided at the service address for over six years (mid-December, 2007 to March, 2014) without natural gas service for his dryer, heater, range, and water heater. I do not find that testimony credible. I also find not credible Complainant's contention that squatters were or may have been living at the service address without his knowledge from March, 2014 to March, 2016. This was an assertion by Complainant. He provided no corroborating evidence to support his assertion. Furthermore, Complainant testified that 923 Gilham Street, Philadelphia, Pennsylvania, has been his primary residence and mailing address since he purchased that property in 2003. The fact that Complainant had natural gas service in Florida from March, 2014 to March, 2016, does not prove that he was not also using gas or allowing gas to be used at the 923 Gilham Street, Philadelphia, Pennsylvania, service address.

PGW contends that on July 22, 2017, personnel from PGW went to the service address to conduct a Curb Valve Safety Recheck in order to determine whether the gas had been illegally reconnected at the service address. PGW personnel found that the gas had been reconnected and disconnected it. On July 25, 2017, an Unbilled Usage Investigation was initiated by PGW, and PGW personnel found that the natural gas service had *again* been reconnected at the service address. This time, PGW personnel disconnected the service and installed a device called an "expander," to prevent further unauthorized reconnection. On July 26, 2017, the day after service was disconnected for the second time, this time with the expander to prevent unauthorized reconnection, Complainant came to PGW's North Philadelphia Business Office and asked that the gas be reconnected. Tr. at 47; PGW-6.

Pursuant to the Philadelphia Gas Works Gas Service Tariff Pa. P.U.C No. 2 § 8.3

In the event of the Company's meters or other property being tampered or interfered with, the Customer being supplied through such equipment shall pay the amount which the Company may estimate is due for service used even if such usage is not registered on the Company's meter, and for any repairs or such replacements required, as well as for costs for inspections, investigations, damages and protective equipment and installations prior to reconnection.

While not specifically stated at hearing, this tariff provision allows PGW to estimate the amount of gas used.

In calculating estimated natural gas usage at the service address from December 19, 2007 to July 25, 2017, PGW used Complainant's historical usage from 2006-2007 to arrive at a calculation, based on actual degree days, to arrive at how much gas would have been used in one year. Tr. at 50-51, PGW-7. The average volume of gas used during the historical usage period was 75.417 ccf (ccf=one hundred cubic feet) per month or 905 ccf per twelve months. PGW-7. Based on estimated usage of 8,814 ccf for the period from December 19, 2007 to July 25, 2017, with a customer charge of \$1,404.00, a commodity charge of \$5,919.84, a Gas Cost Adjustment of minus \$185.26, a distribution charge of \$7,325.31, a WNA charge of \$151.21, and a DSIC charge of 194.53, PGW arrived at a total of \$14,813.63 owed for natural gas service during that period. Tr. at 51, PGW-7.

The calculation, above, is a reasonable estimation of usage based on a year of Complainant's historical usage. Under the provisions of its tariff, PGW is allowed to make this estimate. Because the gas was used illegally through theft, there is no time limitation on the back-billing. 52 Pa. Code § 56.191(d).

As Complainant has failed to demonstrate by a preponderance of the evidence that PGW has violated any provision of the Public Utility Code or the rules and regulations of the Commission, his Complaint must be dismissed.

## CONCLUSIONS OF LAW

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

2. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is on the Complainant.

3. The Complainant has not met his burden of proving that he is entitled to relief. 66 Pa. C.S. § 332(a).

4. 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 four years prior to the date of requesting that service be restored. The four-year limit does not apply in instances of fraud and theft. 52 Pa. Code § 56.191(d).

5. A utility may backbill for theft of service without any time limit. See *Polan v. Duquesne Light Company*, Docket No. F-8156073 (September 17, 1982).

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Mark Hudgens against Philadelphia Gas Works at Docket No. F-2017-2623054 is hereby dismissed.

