

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Elchanan and Esther Abergel
v.
Philadelphia Gas Works

Public Meeting held April 19, 2018
2547528-OSA
F-2016-2547528

MOTION OF COMMISSIONER DAVID W. SWEET

This case comes to us on the Exceptions filed by Philadelphia Gas Works (PGW) to the Initial Decision (ID) of Administrative Law Judge Angela T. Jones (ALJ) which sustained the formal complaint of Elchanan and Esther Abergel and found that the amount charged by PGW for theft of service was too high to reflect reasonable usage from January 2015 through November 2015.

Mr. Abergel admits that, in renovating a rental property, that he disconnected the gas line from the meter and installed a bypass to accommodate the renovation, but he disputes the amount of usage. He claims that he only used the gas oven to heat the entire house during the renovations. PGW found that the house had a water heater, range and house heater hooked up when the bypass was discovered and charged an appropriate amount for all three of those appliances during the time period in question. Mr. Abergel testified that he did not install the heater until just before PGW found the bypass, and that the estimated usage of that appliance should not be included. The ALJ found his testimony to be credible and removed that amount from the PGW bill.

In Exceptions, PGW points out that Mr. Abergel provided only one exhibit, which was the account history of the PECO Energy Company electric bill which did not include winter months. His intent was to show that the house was vacant, meaning that the usage calculations of PGW were not reflective of what was actually consumed. He also claimed that he used electric space heaters in the house in addition to the gas range for heating during the winter months. However, it only reflected usage from September 16, 2015 forward and did not reflect the time period in question. PGW also points out other irregularities with the testimony: that Mr. Abergel testified that he called PGW in order to seek to qualify for a rebate for installation of an energy efficient heater, and that the technician found the bypass during the inspection that Mr. Abergel requested. PGW's records show that the utility was responding to an unbilled usage tip; and that Mr. Abergel testified that when PGW found the bypass in November 2015, he was just finishing up the work in the basement where he installed the meter bypass, but that the stucco work only took him three to four days, and the meter stopped registering usage in March 2015.

PGW points out that the evidence presented by the Complainant amounts to a collection of bald assertions that do not support a decision in his favor¹. He did not present evidence to

¹ *Marion Butler v. Philadelphia Gas Works*, Docket No. F-191502465407 (Opinion and Order entered April 21, 2016).

show when the heater was actually installed or when it became operational, although that evidence should exist, and the burden of proof here is on Mr. Abergel to prove that PGW acted in a way which constituted unreasonable or inadequate service. This he did not do. The utility found a meter bypass and billed the customer for the estimated usage based upon the appliances present at the address during the time that the meter did not register use. These actions are consistent with reasonable service and with the utility's tariff. While I am ordinarily hesitant to overrule the judgment of an ALJ in matters regarding credibility of witnesses, in this instance justice demands it.

Accordingly, I move:

1. That the Exceptions of the Philadelphia Gas Works are granted.
2. That the Initial Decision of Administrative Law Judge Angela T. Jones is reversed.
3. That the Complaint filed by Elchanon and Esther Abergel against the Philadelphia Gas Works at this docket is dismissed in its entirety.
4. That the Office of Special Assistants prepare an appropriate order consistent with this motion.

April 19, 2018
Date



David W. Sweet
Commissioner