

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maria Morales	:	
	:	
v.	:	F-2017-2623492
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Maria Morales because she failed to sustain her burden of proof to establish that Philadelphia Gas Works wrongfully terminated her service for theft of service when there was evidence of tampering or erred in billing her for unbilled usage at the Service Address.

HISTORY OF THE PROCEEDING

On September 6, 2017, Maria Morales (Complainant or Ms. Morales) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant avers that PGW removed her meter and charged her for unbilled usage. The Complainant denies tampering with the meter and requests to have her service restored and all charges removed as relief.

This matter is the timely appeal of a decision from the Bureau of Consumer Services (BCS) dated August 14, 2017, at Case No. 3550222, which dismissed the informal complaint of the Complainant.

On September 28, 2017, PGW filed an Answer to the Complainant's Complaint. In its Answer, PGW asserts on July 27, 2017, the Complainant's service was terminated and the meter was removed due to the discovery of a tampered meter bypass. Further, on August 3, 2017, PGW billed the Complainant a bypass charge in the amount of \$2,549.09 for the time period from February 19, 2014 to July 27, 2017.

On October 25, 2017, a Hearing Notice was issued notifying the parties that an initial hearing was scheduled for December 12, 2017.

A Prehearing Order was issued on October 31, 2017, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On December 11, 2017, Counsel for PGW filed a Motion for Continuance due to the sudden illness of one of her key witnesses.

On December 12, 2017, the undersigned issued a First Interim Order granting the Respondent's Motion for Continuance.

On January 5, 2018, a Hearing Cancellation/Reschedule Notice was issued notifying the parties that an initial hearing was rescheduled for February 8, 2018.

On February 6, 2018, the undersigned issued a Second Interim Order to reschedule the hearing due to weather.

On February 6, 2018, a Hearing Cancellation/Reschedule Notice was issued notifying the parties that an initial hearing was rescheduled for February 20, 2018.

The hearing convened as scheduled on February 20, 2018. The Complainant appeared *pro se* and testified on her own behalf, as well as presented the testimony of Ivan Morales, her ex-husband. The Complainant did not offer any exhibits. The Respondent appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of Gregory Fisher, a Cadet at PGW, Timothy Sullivan, Superintendent of Revenue Protection at PGW, and Tiffany Jones, a Customer Review Officer at PGW.

During the hearing, the Respondent offered five exhibits, all of which were entered into the record. The physical meter in question (Meter No. 1938645) was marked as PGW Exhibit 6 for identification purposes only and not entered into the record.

At the conclusion of the hearing, I determined that a test of the meter was necessary; thus, the Respondent was given one week to submit the test results. The Respondent submitted the test results on February 26, 2018 and they were marked as PGW Exhibit 7. The Complainant was granted one week to file a response and/or any objections to the test results. Receiving no response, nor objection to the test results, they were entered into the record on March 7, 2018.

The record closed on March 16, 2018, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Maria Morales.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides at 5022 C Street, Philadelphia, Pennsylvania 19120 (Service Address). Tr. 10-11.
4. The Complainant and her husband at the time, Ivan Morales, purchased the Service Address on May 24, 2007. Tr. 11, 22, 71-72.

5. The Complainant has resided at the Service Address continuously since the time of purchase. Tr. 11, 22.

6. Ivan Morales ceased residing at the Service Address in September of 2007, but he returns two to three times a month to visit his children. Tr. 27-28.

7. Presently, the Complainant is the sole resident at the Service Address. Tr. 11.

8. In 2007, the Complainant established utility service with PGW in her name at the Service Address. Tr. 11.

9. On October 2, 2014, PGW employee, Robert Keal, visited the Service Address to perform a usage discrepancy investigation. Tr. 35-36; PGW Exh. 1.

10. Mr. Keal was unable to gain access to the meter so he left a three-day meter access notice. Tr. 35-36; PGW Exh. 1, p. 1.

11. PGW did not return to inspect the meter until January 10, 2017, when Anthony Whitfield visited the Service Address to exchange the meter and conduct a usage discrepancy investigation. PGW Exh. 1, p. 2.

12. Mr. Whitfield was unable to gain access to the meter. PGW Exh. 1, p. 2.

13. PGW did not return to inspect the meter again until July 25, 2017, when Nathanael Green visited the Service Address to exchange the meter and conduct a usage discrepancy investigation. PGW Exh. 1, p. 3.

14. Mr. Green was unable to gain access to the meter. Tr. 36; PGW Exh. 1, p. 3.

15. On July 27, 2017, Gregory Fisher, a Cadet at PGW, visited the Service Address to perform an unbilled usage investigation and was able to gain access to the meter. Tr. 37; PGW Exh. 1, p. 4.

16. The meter is located in the basement of the Service Address. Tr. 19, 45.

17. Mr. Fisher found the gas “on” at the Service Address. PGW Exh. 1, p. 7.

18. PGW uses an encoder receiver transmitter (ERT) to measure gas usage at a service address. Tr. 39-40, 59.

19. The ERT is screwed onto the meter and the screws are covered with red security caps to prevent tampering. Tr. 39, 57.

20. If the ERT is disengaged from the meter, it will not measure any gas usage. Tr. 39-40, 58-59.

21. During his investigation, Mr. Fisher found the red security caps on the ERT were removed and a bungee cord was wrapped around the ERT and meter. Tr. 38-40; PGW Exh. 1, p. 7; PGW Exh. 2.

22. Mr. Fisher shut off the gas service by removing the meter, installing locking plugs, and installing expanders at the curb valve. Tr. 46; PGW Exh. 2.

23. Mr. Fisher found an operational gas house heater that was 80,000 BTUs, a gas water heater that was 36,000 BTUs, and a gas range that was 60,000 BTUs. Tr. 38; PGW Exh. 1, p. 5.

24. On February 21, 2018, the meter in question (Meter No. 1938645) tested positive for operational at 1.1% slow. PGW Exh. 7.

25. Tiffany Jones is a Senior Customer Review Officer at PGW. Tr. 70-71.
26. PGW calculated the Complainant's unbilled usage by performing a historical gas usage analysis for the Service Address for the timeframe from August 17, 2012 through July 18, 2013. Tr. 74; PGW Exh. 4.
27. On August 3, 2017, the Complainant was billed for unauthorized usage in the amount of \$2,412.86 for the time period from February 20, 2014 to July 27, 2017. Tr. 80; PGW Exh. 4, pp. 8-9.
28. The meter ceased recording any usage on February 20, 2014. Tr. 73; PGW Exh. 4, p. 7.
29. At that time, the Complainant was already enrolled in PGW's Customer Responsibility Program (CRP) and was being billed \$99.00 per month. Tr. 81.
30. Under the CRP, a customer's bill is not based on usage, but rather their income and household size. Tr. 86-87.
31. After the meter ceased recording any usage on February 20, 2014, the Complainant continued to pay her CRP bill of \$99.00 per month for the next twenty-three (23) months until January 20, 2016. Tr. 91-93; PGW Exh. 4, pp. 6-7.
32. Enrollment in the CRP must be recertified annually. Tr. 88-89.
33. On February 1, 2016, the Complainant visited PGW's North Philadelphia District Office to recertify her enrollment in the CRP. Tr. 92.

34. During that visit, PGW determined that based on the Complainant's income and household size, her CRP bill would be \$87.88 per month; however, based on her usage, which was zero, her bill would be approximately \$12.00 per month.¹ Tr. 92.

35. The PGW representative informed the Complainant that, based on these calculations, enrollment in the CRP would not be beneficial. Tr. 92.

36. As a result, the Complainant declined enrollment in the CRP. Tr. 92.

37. PGW continued to bill the Complainant \$12 - \$13 per month until her meter was disconnected on July 27, 2017. PGW Exh. 4, pp. 5-6.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that she 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*

¹ All bills include a monthly "customer charge" of approximately \$12.00, regardless of any usage. Tr. 81-82.

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).

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 her 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).

Meter Tampering and Termination of Service

In this case, the Respondent terminated the Complainant's service upon discovery of meter tampering. The Complainant denies that she tampered with the meter, suggests the meter is broken, and requests her 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 and her husband at the time, Ivan Morales, purchased the Service Address on May 24, 2007, and established utility service with PGW in her name. Ivan Morales ceased residing at the Service Address in September of 2007 but returns two to three times a month to visit his children. The Complainant has resided at the Service Address continuously since the time of purchase and presently is the sole resident.

On or around February 20, 2014, the meter at the Service Address ceased recording any usage. Approximately seven months later, on October 2, 2014, PGW employee, Robert Keal, visited the Service Address to perform a usage discrepancy investigation. However, Mr. Keal was unable to gain access to the meter, so he left a three-day meter access notice. The meter continued to record zero usage but PGW did not return to inspect the meter again until January 10, 2017, when Anthony Whitfield visited the Service Address to exchange the meter and conduct a usage discrepancy investigation. Mr. Whitfield was also unable to gain access to the meter. PGW did not return to inspect the meter again until July 25, 2017, when Nathanael Green visited the Service Address to exchange the meter and conduct a usage discrepancy investigation. Unfortunately, Mr. Green was also unable to gain access to the meter. Finally, on July 27, 2017, Gregory Fisher, a Cadet at PGW, visited the Service Address to perform an unbilled usage investigation and was able to gain access to the meter.

During his investigation, Mr. Fisher found the gas on, the red security caps on the ERT removed, and a bungee cord wrapped around the ERT and meter. Mr. Fisher 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 gas will continue to flow to the service address. Consequently, Mr. Fisher shut off the gas service by removing the meter, installing locking plugs, and installing expanders at the curb valve.

During the hearing, the Complainant testified that she never had access to the meter and that maybe the meter was broken or the battery stopped. Tr. 14-15. As a result, after the hearing, the meter in question (Meter No. 1938645) was tested by PGW. It tested positive for operational at 1.1% slow, which is within the margin of error allowed by the Commission's Regulations.² Thus, the meter is not broken and only the ERT being disengaged from the meter would account for the zero usage readings. Moreover, the meter being broken or having a dead battery would not account for the missing red caps or bungee cord found by Mr. Fisher.

² The Commission's Regulations allow for a 2% margin of error with respect to meter accuracy. 52 Pa. Code §§ 59.21 and 59.22.

Therefore, based on the missing red caps, bungee cord, and zero usage readings on an operational meter, I conclude the Respondent has presented convincing evidence that the Complainant's meter was tampered with while she was the customer of record. This convincing evidence was not rebutted by the Complainant. Accordingly, I find PGW was within its rights to terminate the Complainant's service for tampering with the meter.

Bypass Charges

Additionally, PGW billed the Complainant 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). Furthermore, 52 Pa.Code § 56.191(d) states:

(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.

Thus, PGW is entitled to require the payment of the Complainant's entire outstanding balance up front as a condition to restore service, without the 4-year limit and without the payment arrangement requirements imposed by § 56.14 on cases that do not involve theft of service.

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 a historical gas usage analysis for the timeframe from August 17, 2012 through July 18, 2013. As a result, the Complainant was appropriately billed for unauthorized usage from February 20, 2014 to July 27, 2017, in the amount of \$2,412.86.

Conclusion

Based on the foregoing, I conclude that the Complainant was unable to meet her burden of proof that PGW wrongfully terminated her service for tampering with the meter, and PGW was entitled to bill the Complainant for unauthorized usage from February 20, 2014 to July 27, 2017, in the amount of \$2,412.86. 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. 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. The Commission's Regulations allow for a 2% margin of error with respect to meter accuracy. 52 Pa. Code §§ 59.21 and 59.22.
5. 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).
6. 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).
7. 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. 52 Pa.Code § 56.191(d).

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

9. The Complainant failed to meet her burden of establishing that the Respondent erred in billing her for unbilled usage at the Service Address from February 20, 2014 to July 27, 2017, in the amount of \$2,412.86.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Maria Morales against Philadelphia Gas Works at Docket No. F-2017-2623492, is dismissed; and
2. That the record at Docket No. F-2017-2623492 be marked closed.

Date: April 13, 2018

_____/s/
F. Joseph Brady
Administrative Law Judge