

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Philadelphia Gas Works
(Complaint Appellant)

v.

William Madison

:
:
:
:
:
:

F-2017-2611805

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Appellant's formal Complaint because Philadelphia Gas Works established that there was tampering of the meter at the Service Address and that a leak survey performed by Philadelphia Gas Works would not have identified the tampering at an earlier date.

HISTORY OF THE PROCEEDING

On June 9, 2017, Philadelphia Gas Works (Appellant or PGW) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, PGW indicated that the Bureau of Consumer Services (BCS) erred in its decision regarding an informal Complaint filed by William Madison regarding a theft of service issue. Specifically, PGW asserts that BCS erred in determining that a leak survey conducted at the Service Address should have detected the meter tampering.

This matter is an appeal of a decision from BCS dated April 26, 2017, at Case No. 3483546, which granted in part the informal complaint of Mr. Madison. BCS determined that PGW should reduce the amount of unauthorized usage from 2566 CCFs to 417.9 CCFs and that the time frame of unauthorized usage should be limited to January 7, 2015, (the date of the leak survey), to August 25, 2016. PGW desires to charge Mr. Madison with unauthorized usage dating back to July 14, 2016, the date his gas service was terminated due to non-payment.

Mr. Madison did not file an Answer in this matter.

By Hearing Notice dated August 9, 2017, a hearing was scheduled for Wednesday, October 11, 2017, at 10:00 a.m., and the matter was assigned to me.

On September 8, 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 it is entitled to the relief requested in the Complaint.

On October 11, 2017, a Hearing Cancellation/Reschedule Notice was issued, and the matter was rescheduled for Tuesday, January 9, 2018, at 10:00 a.m.

The hearing convened as scheduled on January 9, 2018. Mr. Madison appeared *pro se* and testified. Appellant appeared and was represented by Laureto Farinas, Esq., who presented the testimony of four witnesses. Respondent offered five exhibits which were entered into the record.

At the close of the hearing, I requested that PGW submit a late filed exhibit by January 23, 2018, containing PGW's Leak Survey policy as PGW Late Filed Exhibit No. 6. I also allowed Mr. Madison to submit objections by February 2, 2018. As of this date, Mr. Madison has not submitted any objections to the late filed exhibit and the document is entered into the record via this decision.

The hearing resulted in a transcript with a total of 84 pages. The record closed on February 9, 2018, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complaint Appellant in this matter is the Philadelphia Gas Works.
2. The Respondent Appellee in this proceeding is William Madison.
3. The Service Address is 6659 North 20th Street, Philadelphia, Pennsylvania (Service Address). Tr. 71.
4. Mr. Madison owns the Service Address. Tr. 72.
5. PGW terminated service at the Service Address on July 14, 2006, due to non-payment. Tr. 14; PGW Exh. 2.
6. At the time of the termination, the Respondent was the customer of record for the Service Address. Tr. 14; PGW Exh. 2.
7. The Respondent did not contact PGW after the termination to have service restored. Tr. 14.
8. On August 25, 2016, PGW conducted a curb valve safety recheck. Tr. 14 15; PGW Exh. 3.
9. The PGW technician found the gas on and turned it off and installed an expander in the curb valve. Tr. 15; PGW Exh. 3.
10. The PGW technician also left a post termination notice at the Service Address. Tr. 16; PGW Exh. 3.

11. On August 30, 2016, Andru Smith, field service technician, went to the Service Address on an unbilled usage investigation. Tr. 30-31; PGW Exh. 4.
12. Mr. Smith found the gas off at the Service Address. Tr. 32; PGW Exh. 4.
13. Mr. Smith found a gas water heater and gas stove. Tr. 22, 34; PGW Exh. 4.
14. Mr. Smith found a natural gas reading of 30 LEL¹ in the fuel line at the outlet side of the meter. Tr. 33; PGW Exh. 4.
15. The gas reading indicated that the gas had been used less than one week before the reading was obtained. Tr. 33.
16. There should have been no gas reading in the fuel line because the service was shut off in 2006. Tr. 34-35, 44.
17. Mr. Smith removed the meter from the Service Address. Tr. 32; PGW Exh. 4.
18. Patrick Baranowski is a Supervisor for the Leak Survey Unit. Tr. 50.
19. Field Service Department employees conduct leak surveys for PGW. Tr. 51.
20. These employees use a gas detection instrument and walk in a specified area looking for gas readings. Tr. 51; PGW Late Filed Exh. 6.
21. The employees do an average of 20 blocks per day which could consist of one to 20 houses per block. Tr. 52.

¹ LEL=Lower Explosive Limit. Tr. 27, 60.

22. The employees are given the service listing which provides the service location of the pipes in the ground. Tr. 52.

23. The employees conducting the leak survey do not go into homes as part of the survey. Tr. 52.

24. The employees only check the active service lines which are lines that are still attached to the meter. Tr. 53.

25. The employees do not know whether gas service has been terminated at any particular service address. Tr. 53.

26. A leak survey was conducted at the Service Address on January 7, 2015, during which PGW checks for leaks in the lines. Tr. 54.

27. The employee conducting the leak survey would not have had any information regarding the status of the Respondent's account. Tr. 54.

28. PGW conducts walking leak surveys on every block, once every three years. Tr. 55; PGW Late Filed Exh. 6.

29. Timothy Sullivan is the PGW Superintendent of Revenue. Tr. 59.

30. PGW's Leak Survey Plan has not been officially approved by the Commission. Tr. 61.

31. PGW does not conduct inside leak surveys at customer residences at this time. Tr. 61; PGW Late Filed Exh. 6.

32. PGW currently couples orders, meaning that the Company will conduct a leak survey inside when the Company goes to a service address for another reason such as checking a meter, turning on service, etc. Tr. 61-62.

33. PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 17-18; PGW Exh. 5.

34. For the historical usage analysis for the Service Address, PGW used the time period from October 10, 2002, to September 12, 2003, when the Respondent was the customer of record. Tr. 19; PGW Exh. 5.

35. The Respondent was billed for unauthorized usage from July 14, 2006, to August 25, 2016, in the amount of \$5,482.33. Tr. 21; PGW Exh. 5.

36. PGW is requesting \$5,605.56 for restoration of service, which includes the unauthorized charges and a reconnection fee of \$123.23. Tr. 21-22; PGW Exh. 5.

DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a), provides that the party seeking relief from the Commission has the “burden of proof.”

“Burden of proof” is a duty to establish a fact by a “preponderance of the evidence.” The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). In other words, “preponderance” is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. *Burch v. Reading Co.*, 240 F.2d 574 (3d Cir. 1957), *cert. denied*, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a “more likely than

not” inquiry. *Commonwealth v. \$6,425 Seized From Esquilin*, 583 Pa. 544, 555, 580 A.2d 523, 529 (2005).

Upon the presentation by a complainant of a *prima facie* case, i.e., evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the customer shifts to the respondent. If the evidence presented by the respondent is of co-equal value or “weight,” the burden of proof has not been satisfied. The complainant now has to provide some additional evidence to rebut that 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 going forward with the evidence 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).

This proceeding is a *de novo* review of the BCS determination regarding the make-up bill for unauthorized usage. 52 Pa.Code § 56.403(a). The term “*de novo*” simply means “anew” or “over again.”

Tampering Allegations

PGW contends that the BCS erred in its decision which limited the time frame of unauthorized usage at the Service Address from January 7, 2015, to August 25, 2016. PGW argues that there was unauthorized usage which dated back to July 14, 2006, when service was terminated for non-payment. Mr. Madison denied tampering with the utility service at the Service Address. Mr. Madison acknowledged that he owns the Service Address. Tr. 72.

PGW presented the testimony of Field Service Technician, Andru Smith. On August 30, 2016, Mr. Smith went to the Service Address on an unbilled usage investigation. Tr. 30-31; PGW Exh. 4. Mr. Smith found the gas off at the Service Address. Tr. 32; PGW Exh. 4. Mr. Smith found a gas water heater and gas stove. Tr. 22, 34; PGW Exh. 4. Mr. Smith found a natural gas reading of 30 LEL in the fuel line at the outlet side of the meter. Tr. 33;

PGW Exh. 4. Mr. Smith testified that the gas reading indicated the gas had been used within a week before the reading was obtained. Tr. 33. Mr. Smith asserted that there should have been no gas reading in the fuel line because the service was shut off in 2006. Tr. 34-35, 44. Mr. Smith removed the meter from the Service Address. Tr. 32; PGW Exh. 4.

PGW presented the testimony of Tiffany Jones, a Senior Customer Review Officer. Ms. Jones testified that PGW terminated service at the Service Address on July 14, 2006, due to non-payment. Tr. 14; PGW Exh. 2. At the time of the termination, the Respondent was the customer of record for the Service Address. Tr. 14; PGW Exh. 2. The Respondent did not contact PGW after the termination to have service restored. Tr. 14. Further, on August 25, 2016, PGW conducted a curb valve safety recheck. Tr. 14-15; PGW Exh. 3. The PGW technician found the gas on and turned it off and installed an expander in the curb valve. Tr. 15; PGW Exh. 3. The PGW technician also left a post termination notice at the Service Address. Tr. 16; PGW Exh. 3.

PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 17-18; PGW Exh. 5. For the historical usage analysis for the Service Address, PGW used the time period from October 10, 2002, to September 12, 2003, when the Respondent was the customer of record. Tr. 19; PGW Exh. 5. The Respondent was billed for unauthorized usage from July 14, 2006, to August 25, 2016, in the amount of \$5,482.33. Tr. 21; PGW Exh. 5. PGW is requesting for restoration of service the total amount of \$5,605.56, which includes the unauthorized charges and a reconnection fee of \$123.23. Tr. 21-22; PGW Exh. 5.

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 the four-year statute of limitations does not apply to instances of fraud or theft. 52 Pa.Code

§ 56.191(d). 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(e).

While Mr. Madison contends that he had nothing to do with the tampering, I am not persuaded by his testimony. It is well settled that, “[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). Mr. Madison owns the Service Address and was the customer of record in July 2006. There were gas appliances at the Service Address, including a hot water heater and a gas range. Mr. Smith found a natural gas reading of 30 LEL² in the fuel line at the outlet side of the meter. Tr. 33; PGW Exh. 4. Mr. Smith testified that the gas reading indicated the gas had been used within a week before the reading was obtained. Tr. 33. Mr. Smith asserted that there should have been no gas reading in the fuel line because the service was shut off in 2006. Tr. 34 35, 44. PGW also presented testimony and evidence that Mr. Madison was billed for unauthorized usage based on the historical usage at the Service Address during a time period when he 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, I conclude that there was tampering with the service while the Respondent owned the Service Address, and that PGW had grounds to immediately terminate his service on August 25, 2016, for tampering. The Company did nothing wrong by charging the Respondent for the unauthorized usage.

² LEL=Lower Explosive Limit. Tr. 27, 60.

Leak Survey

PGW argues that BCS erred in its decision which limited the period of unauthorized usage to the time period between January 7, 2015, to August 25, 2016, based on the leak survey that the Company conducted on January 7, 2015. The BCS decision indicated that the leak survey was to check all the way to the meter and that PGW should have gained access to the Service Address to complete the leak survey. PGW argues that the leak survey is not designed to determine if there is unauthorized usage at a certain address.

Under the Commission's regulations at Section 59.34, a public utility must establish and execute a leak survey plan which will periodically survey customer owned service lines for leakage. 52 Pa.Code § 59.34(a). The term "customer-owned service line" includes that piping serving a residential customer which is between the main, pipeline or other source of supply and whichever is the more remote of either the meter set assembly, or the wall of the residence or commercial building if the customer owns part of the piping. *Id.*

If the leak survey requires access to the premises of a customer and the customer refuses access, or if the public utility requires a customer to inform it of the location of a service line and he fails to provide the information, the public utility may shut off gas service until access is permitted. 52 Pa.Code § 59.34(b). If a leakage survey to a meter set assembly inside the wall of a residence or commercial building is required, and the public utility cannot gain access to the building because of absence of the occupants, the public utility shall leave a notice at the premises, instructing the customer to designate to the public utility a day and time during normal working hours when access may be had. 52 Pa.Code § 59.34(b).

Under the Federal Pipeline Safety Regulations, Section 192.723, a leak survey with leak detector equipment must be conducted outside business districts as frequently as necessary, but at least once every 5 calendar years at intervals not exceeding 63 months. 49 C.F.R. § 192.723(b)(2).

PGW presented the testimony of Patrick Baranowski, a Supervisor for the Leak Survey Unit. Tr. 50. Mr. Baranowski testified that Field Service Department employees conduct

the leak survey for PGW. Tr. 51. These employees use a gas detection instrument and walk in a specified area looking for gas readings. Tr. 51; PGW Late Filed Exh. 6. The employees do an average of 20 blocks per day which could consist of one to 20 houses per block. Tr. 52. The employees are given the service listing which provides the service location in regard to the house line, which are the pipes in the ground. Tr. 52.

Further, PGW's witness' testimony indicated that the employees conducting the leak survey do not go into homes as part of the survey. Tr. 52. The employees only check the active service lines, which are lines that are still attached to the meter. Tr. 53. The employees do not know whether gas service has been terminated at any particular service address. Tr. 53. A leak survey was conducted at the Service Address on January 7, 2015, to check for leaks in the lines. Tr. 54. The employee would not have had any information regarding the status of the Respondent's account. Tr. 54. PGW conducts walking leak surveys on every block, once every three years. Tr. 55; PGW Late Filed Exh. 6.

PGW also presented the testimony of Timothy Sullivan, Superintendent of Revenue. Tr. 59. Mr. Sullivan testified that PGW's Leak Survey Plan has not been officially approved by the Commission. Tr. 61. PGW does not conduct inside leak surveys at customer residences at this time. Tr. 61; PGW Late Filed Exh. 6. PGW currently couples orders, meaning that the Company will perform a leak survey inside when the Company goes to a service address for another reason such as checking a meter, turning on service, etc. Tr. 61-62.

While the Commission's regulations indicate that the public utilities must conduct leak surveys to the meter set up, PGW does not currently do that as part of its leak surveys. Further, the point of the leak surveys is to check leaks on service lines. The employees who conduct the walking surveys do not have information regarding each individual customer account while conducting the survey. The employees do not have information regarding whether a specific address should have the gas on or off at any particular time. While the BCS decision contends that PGW should have caught the unauthorized usage at the time of the leak survey, there is no indication in the record that the leak survey was designed to identify unauthorized usage. Therefore, the BCS decision erred in limiting the time frame for the unauthorized usage

to the point when the leak survey was conducted on January 7, 2015. As such, the Respondent is responsible for the total bill for unauthorized usage from July 14, 2006, to August 25, 2016, in the amount of \$5,482.33.

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 Appellant. 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 proceeding is a *de novo* review of the BCS determination. 52 Pa.Code § 56.403(a).
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. 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. 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.

8. 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(e).

9. A public utility must establish and execute a leak survey plan which will periodically survey customer owned service lines for leakage. 52 Pa.Code § 59.34(a).

10. The Appellant met its burden of demonstrating that there was tampering at the Service Address.

11. The Appellant met its burden of establishing that the Company correctly billed the Respondent for unauthorized usage at the Service Address from July 14, 2006, to August 25, 2016, based on historical usage at the premises.

12. The Appellant met its burden of establishing that the leak survey should not serve to limit the time period for the unauthorized usage at the Service Address.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Philadelphia Gas Works' Late Filed Exhibit No. 6 is entered into the record;

2. That the Complaint of Philadelphia Gas Works v. William Madison at Docket No. F-2017-2611805 is granted;

