

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Felix Charles	:	
	:	
v.	:	F-2017-2599562
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies Felix Charles' Complaint against Philadelphia Gas Works concluding that Felix Charles did not prove that he is not responsible for charges related to previously unbilled services.

**HISTORY OF THE PROCEEDING**

On April 17, 2017, Felix Charles (Mr. Charles or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility had shut off his gas service and had charged him for unauthorized usage of gas service at his property. As relief, Mr. Charles requested that PGW turn his gas service on and remove all charges connected to the unauthorized usage of gas.

The Complaint was filed as a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision, at BCS Case # 3502041.

On May 9, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated May 18, 2017, notified the parties that an initial hearing was scheduled in this matter for Monday, June 26, 2017, at 10:00 a.m.

A Prehearing Order was issued on June 8, 2017, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on June 26, 2017. Felix Charles appeared pro se, accompanied by Clissita Daniels, a community health worker with Penn Medicine. Laureto Farinas, Esq., appeared representing PGW. At the beginning of the hearing, I addressed the Complainant's request for a continuance of the hearing in order to obtain legal representation in this matter. Ms. Daniels expressed her willingness to assist Mr. Charles in obtaining legal representation through the various resources available to her in her capacity as a community health worker. The Respondent did not object to Complainant's request for a continuance.

I granted Mr. Charles' continuance request and instructed him and Ms. Daniels to inform me if and when Mr. Charles obtained legal representation. Tr. 9-12.

On August 31, 2017, Ms. Daniels informed me that Mr. Charles had been unsuccessful in obtaining legal representation.

A Hearing Notice dated September 20, 2017, notified the parties that a hearing was scheduled in this matter for Wednesday, November 29, 2017, at 10:00 a.m.

A second Prehearing Order was issued on November 16, 2017, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

Prior to convening the hearing on November 29, 2017, the attorney for PGW, Mr. Farinas, requested a continuance of the hearing in order to allow the Complainant's witnesses to locate and submit documents pertaining to repairs performed on Mr. Charles' heating system. The Complainant did not object to the Respondent's request for a continuance. I granted PGW's continuance request and informed the parties that the further hearing would be scheduled for a later date.

A Hearing Notice dated December 4, 2017, notified the parties that a further telephonic hearing was scheduled in this matter for Friday, February 9, 2018, at 10:00 a.m.

On January 16, 2018, I issued Prehearing Order # 3 advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on February 9, 2018. Felix Charles appeared pro se and testified in support of his Complaint. Clissita Daniels and Joe Redden also testified in support of the Complaint. The Complainant sponsored one exhibit which was admitted into the record. Laureto Farinas, Esq., represented the Respondent, and presented the testimony of Jessica Glace and Timothy Sullivan. The Respondent sponsored nine exhibits, which were admitted into the record.

The record was closed upon receipt of my copy of the transcript on March 22, 2018.

## FINDINGS OF FACT

1. The Complainant is Felix Charles, who resides at 52 N. 56<sup>th</sup> Street, Philadelphia, PA 19139 (Service Address). Tr. <sup>1</sup> 10.
2. Mr. Charles has owned and occupied the Service Address since 1994. Tr. 15.
3. The Service Address is a two-story building with four bedrooms and two bathrooms. Tr. 15.
4. For the last 14 years, Mr. Charles has worked six days a week at a restaurant, where he sometimes works 50-60 hours per week. Tr. 28, 106-107.
5. Joe Redden (Mr. Redden) is a certified electrician and carpenter, whereas his brother, Turhan Redden, is a certified HVAC (heating, ventilation and air conditioning) technician. Tr. 39-40.
6. In December of 2016, Joe and Turhan Redden visited the Service Address to inspect Mr. Charles' house heating unit. Tr. 42-46, 50-51, PGW Exhibit 8.
7. On December 22, 2016, Turhan Redden prepared a heating unit repair proposal, which indicated that Mr. Charles' unit was not responsive due to a broken thermostat and circuit breaker. Tr. 42-46, 50-51, PGW Exhibit 8.
8. Approximately two weeks after presenting Mr. Charles with the work proposal, Joe and Turhan Redden returned to the Service Address and replaced the broken thermostat and circuit breaker. Tr. 44, 120.

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<sup>1</sup> "Tr." refers to the February 9, 2018 hearing transcript.

9. Mr. Charles paid the Redden brothers approximately \$150.00 for the work done on his heating system and had a fully operational heating system by early January of 2017. Tr. 44, 120, 125-26.

10. Clissita Daniels is a Community Health Worker with Penn Medicine. Tr. 31.

11. On February 3, 2017, Ms. Daniels called PGW on Mr. Charles' behalf to report a possible gas leak. Tr. 33, 65, PGW Exhibit 1.

12. On February 3, 2017, PGW's technician, Scott Hunter, visited the Service Address on a suspected gas leak order. *Id.*

13. While at the property, Mr. Hunter noted a foreign odor, a burning smell and a rusted-out flue pipe going into the chimney. Tr. 65, PGW Exhibit 1.

14. Mr. Hunter also found that the gas meter serving the Service Address had been tampered with; one red cap was missing and there was a foreign screw on the meter. *Id.*

15. Red caps are security seals that are installed in PGW's meter shop before the meters leave the shop. Tr. 90-91.

16. Each PGW gas meter has two red caps. Tr. 92.

17. The red caps are placed on top of the screws on the meter. Tr. 91.

18. On February 3, 2017, Mr. Hunter found that the red cap on the top left-hand corner was missing from the gas meter serving the Service Address. Tr. 96.

19. A missing red cap is an indication that someone purposefully removed it from the meter to reach the screw underneath the seal. Tr. 92-93, 101-102.

20. On all its gas meters PGW uses galvanized screws which do not rust. Tr. 99-100.
21. On February 3, 2017, Mr. Hunter found that the screw on the top left corner of Mr. Charles' meter was rusted. Tr. 98-100, PGW Exhibit 4.
22. Loosening the two screws on one side of the meter allows for the meter index to be pulled away from the gears of the meter, rendering the meter unable to record the gas that flows through it. Tr. 92-93, 94, 101-102.
23. The loosened index can be pushed back in, causing the gears in the meter to reengage and the meter to start recording again. Tr. 94-95.
24. Loosening the index from the rest of the gas meter does not affect the tamper counts recorded by the meter, as a tamper count will occur if that meter is tilted more than 45 degrees. Tr. 102.
25. Mr. Hunter listed the following gas appliances as operational at the time of his visit to the Service Address: a 75,000 BTU house heater, a 34,000 BTU water heater, and a 55,000 BTU range. Tr. 65.
26. Mr. Hunter's notes from the February 3, 2017 visit indicate that he turned the gas off and removed the gas meter at the Service Address after noting that there was barely any gas usage recorded at the property. Tr. 65-66, PGW Exhibit 1.
27. Following PGW's visit at the Service Address on February 3, 2017, Ms. Daniels contacted Joe Redden and his brother Turhan Redden and asked them to repair the flue stack identified by PGW as the source of the gas odor. Tr. 34, 46.

28. Joe Redden and Turhan Redden returned to the Service Address soon after Ms. Daniels' call. They repaired the flue stack and removed the source of the gas odor, which they found to be emanating from a valve behind the stove area. Tr. 48-51.

29. After completing the work, Joe Redden and his brother informed Mr. Charles that the hazardous conditions were no longer present and that PGW could turn on the gas at the Service Address. Tr. 49.

30. On February 7, 2017, Clissita Daniels contacted PGW requesting that the gas be restored at the Service Address. Tr. 66, PGW Exhibit 1.

31. A PGW representative informed Ms. Daniels of Mr. Hunter's findings during the February 3, 2017 visit, and explained to her that the gas could not be restored until Mr. Charles' account was billed for the unauthorized usage of gas. *Id.*

32. On February 8, 2017, Ms. Daniels contacted PGW on behalf of the Complainant requesting the terms for reconnection of gas at the Service Address. Tr. 67, 74-75, 77-80, PGW Exhibit 1.

33. On February 8, 2017, PGW informed Ms. Daniels that it had assessed Mr. Charles \$1,276.11 in unauthorized usage service charges. *Id.*

34. In addition to the \$1,276.11 in unauthorized usage service charges, PGW requested that in order to reconnect service at his property that the Complainant pay a reconnection fee of \$123.23 and a security deposit of \$380.00, for a total of \$1,779.33. Tr. 67, PGW Exhibit 5.

35. Ms. Daniels disputed the amount and PGW provided her with instructions for filing an informal complaint with the Commission. Tr. 67, PGW Exhibit 1.

36. Mr. Charles' gas consumption history during the January and February months is as follows:

Billing Date	CCF Usage	HDD <sup>2</sup>	Billing Date	CCF Usage	HDD
1/9/2010	110	969	1/8/2014	285	992
2/8/2010	111	899	2/7/2014	226	1034
1/10/2011	109	1044	1/9/2015	41	849
2/8/2011	114	1105	2/7/2015	38	1001
1/9/2012	90	746	1/9/2016	16	586
2/8/2012	75	807	2/9/2016	14	818
1/11/2013	125	802	1/10/2017	34	986
2/9/2013	96	872	2/3/2017	11	599

PGW Exhibit 2.

### DISCUSSION

In the present formal Complaint, Mr. Charles alleged that PGW shut off his gas service and charged him for unauthorized usage of gas service at his property. As relief, Mr. Charles requested that PGW turn his gas service on and remove all charges connected to the unauthorized usage of gas.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the

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<sup>2</sup> Heating Degree Day (HDD) - A unit measuring the extent to which the outdoor mean (average of maximum and minimum) daily dry-bulb temperature falls below (in the case of heating) or rises above (in the case of cooling) an assumed base. The base is normally taken as 65°F for heating and for cooling unless otherwise designated. One degree-day is counted for each degree of deficiency below (for heating) or excess over (for cooling) the assumed base, for each calendar day on which such deficiency or excess occurs. James H. Cawley and Norman Kennard, *Rate Case Handbook, A Guide to Utility Ratemaking before the Pennsylvania Public Utility Commission*, Glossary of Terms, Appendix Q (Pa. PUC 1983).

complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95 (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing 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.*, 529 Pa. 654, 602 A.2d 863 (1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

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).

At the February 9, 2018 hearing, Mr. Charles testified that he has owned and occupied the Service Address since 1994. Tr. 15. The Service Address is a two-story building with four bedrooms and two bathrooms. Tr. 15. Initially, Mr. Charles resided there with his

daughters, but he testified that he now resides there by himself. Tr. 35-36. Mr. Charles explained that he has a gas heater, a gas water heater, and a gas stove in his property, however, his gas heater had not been working for the last three years. Tr. 11, 18. Instead, he testified that he uses two electric space heaters to heat his bedroom and his bathroom in the winter. Tr. 83-84. He also stated that he does not cook much in the house because for the last 14 years he has worked six days a week at a restaurant where he sometimes works 50-60 hours per week. Tr. 28, 106-107.

Clissita Daniels testified in support of the Complaint. She explained that she is a community health worker with Penn Medicine, and that she has known Mr. Charles for two years. Tr. 31. She testified that as part of her job responsibilities she does home visits to her clients. Tr. 32. During several of those visits to Mr. Charles' house, she detected the smell of gas. Tr. 32. She brought this to Mr. Charles' attention during a home visit in December of 2016 and together with him she checked the burners on his stove but was not able to locate the source of the smell. Tr. 33.

Ms. Daniels testified that the smell of gas was much stronger during her visit to the Service Address in February of 2017. Tr. 33. On that occasion, she called PGW on Mr. Charles' behalf to report a possible gas leak. Tr. 33. PGW turned Mr. Charles' gas off following her report of the gas smell. Tr. 33. Mr. Charles informed her that the PGW technician who responded to her call had diagnosed a dilapidated flue stack as the cause of the strong gas odor in the property. Tr. 33.

Ms. Daniels contacted Joe Redden and his brother Turhan Redden and asked them to look at the problem and fix it. Tr. 34. According to Ms. Daniels, the contractors were able to fix the problem by the next day. Tr. 34. She testified that she contacted PGW on behalf of Mr. Charles to report that the repairs were complete and to request that the gas service at the Service Address be turned on. Tr. 34. It was during that conversation that Ms. Daniels learned that on February 3, 2017, PGW had removed the gas meter serving the Service Address after the technician noticed that a foreign screw was used on the meter and concluded that the meter had been tampered with. Tr. 34.

Joe Redden testified in support of the Complaint. Mr. Redden testified that he is a certified electrician and carpenter, whereas his brother, Turhan Redden, is a certified HVAC technician. Tr. 39-40. According to Mr. Redden, he and his brother had been at the Service Address on at least one prior occasion before returning to repair the flue stack in February of 2017. Tr. 42-46. More precisely, in December of 2016, Joe and Turhan Redden visited the Service Address to inspect Mr. Charles' heating unit. On December 22, 2016, Turhan Redden prepared a heating unit repair proposal which indicated that Mr. Charles' unit was not responsive due to a broken thermostat and circuit breaker. Tr. 46, 50-51, PGW Exhibit 8. Mr. Redden testified that approximately two weeks later, he and his brother returned to the Service Address and repaired the broken thermostat and breaker. Tr. 44.

He confirmed Ms. Daniels' testimony that he and his brother got a call from Ms. Daniels on or about February 3, 2017, asking them to locate the source of the gas smell and to repair the flue stack. Tr. 46. Mr. Redden explained that, when they returned to the property soon after Ms. Daniels' call, they repaired the flue stack and removed the source of the gas odor which was found to be a valve behind the stove area. Tr. 48-51. After completing the work, Mr. Redden and his brother informed Mr. Charles that the hazardous conditions were no longer present and that PGW could turn on the gas at the Service Address. Tr. 49.

Mr. Redden testified that he and his brother returned to the Service Address one more time to replace Mr. Charles' gas stove with an electric one after PGW assessed theft of service charges against Mr. Charles. Tr. 49, 58.

In response to Mr. Charles', Ms. Daniels' and Mr. Redden's testimonies in support of the Complaint, PGW presented the testimonies of Jessica Glace, a Customer Review officer with PGW, and Timothy Sullivan, the Superintendent of Revenue Protection in PGW's Operations Department. Ms. Glace testified that on February 3, 2017 a neighbor of Mr. Charles contacted PGW to report a strong odor of gas at the Service Address. Tr. 65, PGW Exhibit 1. PGW's technician, Scott Hunter, visited the Service Address on February 3, 2017 on a suspected gas leak order. *Id.* While at the property, he noted a foreign odor, a burning smell, and a rusted-out flue pipe going into the chimney. He also found that the gas meter serving the Service

Address had been tampered with; one red cap was missing, and a foreign screw was in the meter's ERT. *Id.* Mr. Hunter listed the following gas appliances as operational at the time of his visit to the Service Address: a 75,000 BTU house heater, a 34,000 BTU water heater, and a 55,000 BTU range. *Id.* His notes indicate that he turned the gas off and removed the gas meter at the Service Address after noting that there was barely any gas usage recorded at the property. Tr. 65-66, PGW Exhibit 1.

Ms. Glace testified that on February 7, 2017, Clissita Daniels, identifying herself as Complainant's niece, contacted PGW requesting that the gas be restored at the Service Address. Tr. 66, PGW Exhibit 1. She was informed of Mr. Hunter's findings from the February 3, 2017 visit and that the gas could not be restored until Mr. Charles' account was billed for the unauthorized usage of gas. *Id.*

Ms. Glace explained that on February 8, 2017, Ms. Daniels contacted PGW on behalf of the Complainant requesting the terms for reconnection of gas at the Service Address. Tr. 67, 74-75, 77-80, PGW Exhibit 1. Based on the BTUs of the gas appliances found at the property on February 3, 2017, PGW calculated a total bill of \$3,078.16 covering the period from February 6, 2014 through February 3, 2017. Tr. 67, 74-75, 77-80, PGW Exhibits 1, 5. Out of the total bill for \$3,078.16, PGW deducted \$1,802.06 already billed to Mr. Charles during the period from February 6, 2014, through February 3, 2017. *Id.* On February 8, 2017, PGW informed Ms. Daniels that PGW requested that the Complainant pay \$1,276.11<sup>3</sup> in unauthorized usage service charges. Tr. 67, 74-75, 77-80, PGW Exhibit 1. In addition to the \$1,276.11 in unauthorized usage service charges, PGW requested that before the service was reconnected at his property the Complainant pay a reconnection fee of \$123.23 and a security deposit of \$380.00, for a total of \$1,779.33. Tr. 67, PGW Exhibit 5. Ms. Daniels disputed the amount and PGW provided her with instructions for filing an informal complaint with the Commission. Tr. 67, PGW Exhibit 1.

Next, Ms. Glace analyzed the Complainant's gas usage history at the Service Address from January 2010 to February 2017. Tr. 68-73, PGW Exhibit 2. Comparing gas usage

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<sup>3</sup> \$3,078.16 - \$1,802.06 = \$1,276.10

at the Service Address in the months of January and February for the years 2010-2017, Ms. Glace testified that gas usage decreased substantially in 2015 and remained very low until February 3, 2017, when the gas meter was removed from the property. Tr. 66-73, PGW Exhibit 2.

Timothy Sullivan's testimony corroborated that of Ms. Glace concerning Mr. Hunter's visit to the Service Address on February 3, 2017. Tr. 86-89. He further explained that red caps are security seals that are installed in PGW's meter shop before the meters leave the shop. Tr. 90-91. The red caps are placed on top of the screws. Tr. 91. Each PGW gas meter has two red caps. Tr. 92. On February 3, 2017, Mr. Hunter found one of the red caps missing from the meter serving the Service Address. Tr. 96. Using pictures of the meter serving Mr. Charles' residence, Mr. Sullivan testified that the missing red cap would have been sitting on the top left-hand corner of the meter. Tr. 90.

According to Mr. Sullivan, a missing red cap is an indication that someone purposefully removed it from the meter. Tr. 92. When asked to clarify that statement, Mr. Sullivan explained, "[Red caps are] put in there pretty good. You have to destroy them to get them out...take them out with a hammer and a screw driver to remove them." Tr. 101. Mr. Sullivan testified that the reason for removing a red cap would be to reach the screw underneath the seal. Tr. 92-93. He testified that the theft reporting sheet prepared by Mr. Hunter on February 3, 2017 also noted his finding of a foreign screw on the meter. Using pictures of the meter serving Mr. Charles' residence, Mr. Sullivan identified the foreign screw as the one on the top left corner of the meter. Tr. 98- 99, PGW Exhibit 4. He explained that on all its gas meters PGW uses galvanized screws which do not rust. Tr. 99-100. The screw on the top left corner of Mr. Charles' meter was rusted. Tr. 98-100, PGW Exhibit 4.

Mr. Sullivan testified that loosening the two screws on one side of the meter allows for the index<sup>4</sup> to be pulled "away from the gears of the meter so that gas won't be recorded through it," while the other red cap is still on the meter. Tr. 92-93, 94, 101-102. He

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<sup>4</sup> In his testimony, Mr. Sullivan described the index as consisting of the rotary numbers which sit on top of the meter behind a clear plastic window. Tr. 93.

explained that the index could be pushed back in, causing the gears in the meter to reengage and the meter to start recording again. Tr. 94-95. Mr. Sullivan testified that if these steps were carried out regularly they would allow for the gas consumption recorded by the meter to decrease considerably without going down to zero and without raising a red flag with the Respondent. Tr. 94, 103-105. According to Mr. Sullivan, these steps would conceal theft of service and would produce a usage pattern similar to the one described by Ms. Glace in her analysis of Mr. Charles' gas consumption history. Tr. 95. In addition, he explained that the method he described does not affect the tamper counts recorded by the gas meter, as "a tamper count will occur if that meter is tilted more than 45 degrees. So if you were to pry the [index] cover away, it wouldn't - - the tamper switch wouldn't go off." Tr. 102. Lastly, Mr. Sullivan testified that in his position as the Superintendent of Revenue Protection in PGW's Operations Department he has frequently come across cases where the method described above was employed to conceal theft of service from the utility. Tr. 104.

Mr. Charles' gas consumption history during the January and February months is as follows:

Date	CCF Usage	HDD	Date	CCF Usage	HDD
1/9/2010	110	969	1/8/2014	285	992
2/8/2010	111	899	2/7/2014	226	1034
1/10/2011	109	1044	1/9/2015	41	849
2/8/2011	114	1105	2/7/2015	38	1001
1/9/2012	90	746	1/9/2016	16	586
2/8/2012	75	807	2/9/2016	14	818
1/11/2013	125	802	1/10/2017	34	986
2/9/2013	96	872	<b>2/3/2017</b>	<b>11</b>	<b>599</b>

PGW Exhibit 2. (Emphasis added).

It is undisputed in this case that Mr. Charles' gas usage in these two winter months decreased considerably after 2014. Mr. Charles maintains that the decrease in usage resulted from a malfunctioning heating system. PGW maintains that the decrease in usage

resulted from meter tampering. I find that Joe Redden's testimony is critical in resolving this dispute.

In particular, Joe Redden testified that in December of 2016, he and his brother visited the Service Address to inspect Mr. Charles' heating unit. Tr. 42-46, 50-51. On December 22, 2016, Turhan Redden prepared a heating unit repair proposal which indicated that Mr. Charles' unit was not responsive due to a broken thermostat and circuit breaker. Tr. 46, 50-51, PGW Exhibit 8. Joe Redden testified that approximately two weeks later, he and his brother returned to the Service Address and repaired the broken thermostat and breaker. Tr. 44. By Mr. Redden's account, Mr. Charles' heating system was repaired and rendered operational, "a few weeks before ...[Ms. Daniels] called PGW" to report a suspected gas leak on February 3, 2017. Tr. 120. Consequently, the record in this case reveals that Mr. Charles paid the Redden brothers approximately \$150.00 for the work done on his heating system and had a fully operational heating system by early January of 2017. Tr. 125-26.

In fact, when Mr. Hunter visited the property on February 3, 2017, he found that Mr. Charles' house heater was operational, yet Mr. Charles's gas usage for the period January 10, 2017 to February 3, 2017, does not reflect that fact. See PGW Exhibit 2. Not only is there no notable increase in Mr. Charles' gas usage for the 25-day period (January 10, 2017, to February 3, 2017), his usage is even lower than what it was in January of 2016, when Mr. Charles claims that his heating system was not working and when the Respondent recorded comparable heating degree days. See Tr. 122.

Mr. Charles offered no explanation for this discrepancy. However, Ms. Daniels averred that "Mr. Felix, even though the heater was fixed, he's so used to doing what he does, he didn't even use it." Tr. 122-23. In addition to being a mere conjecture on Ms. Daniels's part, this statement depicts a highly unlikely scenario in which Mr. Charles paid his contractors approximately \$150.00 to repair his heating system in the middle of winter, only to decide not to use it at all. See PGW Exhibit 2.

After carefully reviewing the evidence collected in this matter, I find that the Complainant has failed to carry his burden of proving by a preponderance of the evidence that the low gas usage recorded during the period February 6, 2014 to February 3, 2017, was the result of a faulty heating system. In addition, I find that the Complainant has failed to carry his burden of proving by a preponderance of the evidence that PGW acted improperly in assessing theft of service charges against his account. Therefore, Mr. Charles' Complaint against PGW is dismissed in its entirety with prejudice.

#### CONCLUSIONS OF LAW

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

2. The party filing the Complaint bears the burden of proving that he is entitled to relief from the Commission. 66 Pa.C.S.A. § 332(a).

3. "Burden of proof" means a duty to establish one's case by a preponderance of the evidence, which requires that the evidence be more convincing by even the smallest degree, than the evidence presented by the other side. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

4. Complainant failed to carry his burden of proving that he is not responsible for charges related to previously unbilled services due to theft covering the period February 6, 2014 through February 3, 2017. 66 Pa.C.S.A. §§ 1407(d) and (e); 52 Pa.Code §§ 56.2, 56.35(b).

