

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas DiAntonio	:	
	:	
v.	:	F-2017-2634058
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Thomas DiAntonio because he failed to sustain his burden of proof to establish that Philadelphia Gas Works wrongfully terminated his service for theft of service or erred in billing him for unbilled usage at the Service Address.

HISTORY OF THE PROCEEDING

On November 2, 2017, Thomas DiAntonio (Complainant or Mr. DiAntonio) 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 overcharged him and he would like the overcharged amount removed from his account.

This matter is the timely appeal of a decision from the Bureau of Consumer Services (BCS) dated October 13, 2017, at Case No. 3565667, which dismissed the informal complaint of the Complainant.

On December 11, 2017, PGW filed an Answer to Mr. DiAntonio's Complaint. In its Answer, PGW asserts that on September 22, 2017, the Complainant's service was terminated and the meter was removed due to the discovery of a tampered meter bypass. Further, on September 26, 2017, PGW billed the Complainant for the theft charges.

By Hearing Notice dated January 4, 2018, an Initial Call-In Telephonic Hearing was scheduled in this matter for February 20, 2018.

A Prehearing Order was issued on January 22, 2018, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On January 30, 2018, the undersigned issued a First Interim Order granting the Respondent's request for a change to an in-person hearing.

On January 30, 2018, a Hearing Type Change/Cancel/Reschedule Notice was issued notifying the parties that the February 20, 2018 hearing was cancelled and an initial in-person hearing was rescheduled for March 28, 2018.

The hearing convened as scheduled on March 28, 2018. The Complainant appeared *pro se* and testified on his own behalf. The Complainant offered the following three exhibits, all of which were entered into the record:

- Complainant 1: Photograph of Electric Heater (1 page)
- Complainant 2: Receipt for Gas Hot Water Heater (1 page)
- Complainant 3: Photograph of Insulation (1 page)

The Respondent appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of Sean Howard, a Field Service Technician at PGW, Richard Lipscomb, a Supervisor with Revenue Protection at PGW, and Tiffany Jones, a Senior Customer

Review Officer at PGW. During the hearing, the Respondent offered the following seven exhibits, all of which were entered into the record:

- PGW 1: Theft Reporting Sheet (8 pages)
- PGW 2: Tamper Count Records (11 pages)
- PGW 3: Ownership Documents for Service Address (2 pages)
- PGW 4: Theft Bill Calculation (13 pages)
- PGW 5: BCS Informal Complaint (#3565667) (4 pages)
- PGW 6: Gas Usage Analysis (10/18/17 – 3/21/18) (1 page)
- PGW 7: Gas Usage Analysis (10/19/05 – 3/21/17) (12 pages)

At the conclusion of the hearing, PGW offered to recalculate the outstanding bill excluding the hot water heater that the Complainant switched from electric to gas. I received the Revised Bill Calculation on April 5, 2018 and it was marked as PGW Exhibit 8 and entered into the record.

The record in this case consists of a 110-page transcript and eleven exhibits. The record closed on April 26, 2018, when I received the transcript of the March 28, 2018, hearing.

FINDINGS OF FACT

1. The Complainant is Thomas DiAntonio.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides at 111 Jackson Street, Philadelphia, Pennsylvania 19148 (Service Address). Tr. 6.
4. The Complainant established service with PGW at the Service Address as of July 18, 2000. Tr. 7.

5. The Complainant and his wife purchased the Service Address on May 24, 2001. Tr. 7, 73; PGW Exh. 3.

6. The Complainant resides at the Service Address along with his wife and two children. Tr. 7.

7. Sean Howard is a Field Service Technician at PGW. Tr. 27.

8. On September 22, 2017, Sean Howard visited the Service Address on a relight order. Tr. 28-29.

9. A relight order occurs when PGW shuts off service to a home or group of homes to perform maintenance and a technician must go back to each home and “light everything up and make sure the customer has everything working operationally correct.” Tr. 28.

10. PGW uses an encoder receiver transmitter (ERT) to measure gas usage at a service address. Tr. 48-49.

11. The ERT is screwed onto the meter with four screws and two of the screws are covered with red security caps to prevent tampering. Tr. 45.

12. During his visit to the Service Address on September 22, 2017, Mr. Howard found the ERT head was loose, the screws were loose, one of the red caps was missing, and one of the plastic ERT head mounts where it was screwed-in was broken off. Tr. 31-37; PGW Exh. 1.

13. Mr. Howard removed the meter, installed locking plugs, and installed expanders at the curb valve. Tr. 31-32; PGW Exh. 1.

14. Mr. Howard found an operational gas house heater that was 100,000 BTUs, a gas water heater that was 76,000 BTUs, a gas range that was 65,000 BTUs, and a gas dryer that was 22,000 BTUs. Tr. 31; PGW Exh. 1.

15. Richard Lipscomb is a Supervisor assigned to the Revenue Protection Department at PGW. Tr. 44.

16. The Revenue Protection Department is the department at PGW that deals with incidences of theft. Tr. 45.

17. If the ERT is disengaged from the meter, it will not measure any gas usage. Tr. 48-49.

18. The ERT contains a tamper indicator that is triggered if the ERT moves more than 60 degrees. Tr. 54, 56, 65.

19. PGW records the number on the tamper indicator each month the meter is read electronically. Tr. 57; PGW Exh. 2.

20. According to the tamper indicator, the ERT at the Service Address was moved at least 69 times between January 23, 2006 and September 19, 2017. Tr. 60-61; PGW Exh. 2.

21. Tiffany Jones is a Senior Customer Review Officer at PGW. Tr. 70-71.

22. PGW calculated the Complainant's unbilled usage based on the BTUs of the appliances found at the Service Address and historical weather data for the timeframe from December 20, 2005 through September 22, 2017. Tr. 73-74; PGW Exh. 4.

23. PGW obtains its weather data from the National Oceanic and Atmospheric Administration (NOAA). Tr. 74.

24. On September 26, 2017, the Complainant was billed for unauthorized usage in the amount of \$12,846.96 for the time period from December 20, 2005 through September 22, 2017. Tr. 76; PGW Exh. 4, p. 13.

25. In October of 2017, PGW reconnected gas service to the Service Address in the name of the Complainant's son, Jacob DiAntonio, who resides at a different address. Tr. 10-11, 22, 78.

26. PGW found the following in the gas usage analysis:

Dates		Number of Heating Degree Days ¹	CFDD ²
From	To		
10/19/2005	3/22/2006	3616	1.7
10/19/2006	3/22/2007	3666	2.6
10/19/2007	3/20/2008	3583	2.1
10/17/2008	3/20/2009	3932	2.4
10/19/2009	3/19/2010	3633	1.7
10/19/2010	3/22/2011	3850	1.1
10/19/2011	3/21/2012	3026	.6
10/19/2012	3/21/2013	3583	1.0
10/18/2013	3/21/2014	4150	2.0
10/17/2014	3/19/2015	4080	3.9
10/19/2015	3/18/2016	2827	6.4
10/18/2016	3/21/2017	3274	3.8
10/18/2017	3/21/2018 ³	3673	7.9

Tr. 78-83; PGW Exhs. 6, 7.

¹ A heating degree day is a measurement of how much the average temperature on a particular day is below 65°F.

² CFDD equals the cubic feet of gas used per degree day.

³ Period of time after gas service was reconnected under son's name.

27. The Complainant had an electric water heater until he converted it to gas on October 16, 2016. Tr. 23.

28. During the hearing, PGW agreed to recalculate the Complainant's theft bill based on the fact that the water heater was electric until October 16, 2016. Tr. 107.

29. On April 5, 2018, PGW submitted a revised theft bill calculation in the amount of \$8,777.75, for the time period from December 20, 2005 through September 22, 2017. PGW Exh. 8.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by a preponderance of the evidence that he 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 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 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).

Meter Tampering

In this case, the Respondent terminated the Complainant's service upon discovery of meter tampering. The Complainant denies that he tampered with the meter and therefore he is not responsible for the unbilled usage he was charged.

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 established service with PGW at the Service Address as of July 18, 2000. The Complainant and his wife purchased the Service Address on May 24, 2001 and currently reside there along with their two children.

On September 22, 2017, Sean Howard, a Field Service Technician at PGW, visited the Service Address on a relight order. During this visit, Mr. Howard found the ERT head was loose, the screws were loose, one of the red caps was missing, and one of the plastic ERT head mounts where it was screwed-in was broken off. Mr. Howard 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. Howard shut off the gas service by removing the meter, installing locking plugs, and installing expanders at the curb valve.

Moreover, PGW presented the testimony of Richard Lipscomb, who is a Supervisor assigned to the Revenue Protection Department at PGW. Mr. Lipscomb explained that the ERT contains a tamper indicator that is triggered if the ERT moves more than 60 degrees, which usually occurs when it is removed. PGW records the number on the tamper indicator each month the meter is read electronically. According to the tamper indicator, the ERT at the Service Address was moved *at least* 69 times⁴ between January 23, 2006 and September 19, 2017.

In addition to the physical evidence of tampering, Tiffany Jones, a Senior Customer Review Officer at PGW, offered a gas usage comparison that showed how the Complainant's gas usage increased significantly after the meter was reinstalled under the son's name. In October of 2017, PGW reconnected gas service to the Service Address in the name of the Complainant's son, Jacob DiAntonio, who resides at a different address. The assumption is that there is no meter tampering occurring at the Service Address since the reconnection. According to the records, the Complainant used 7.9 CFDD for the five-month period from October 18, 2017 to March 21, 2018 since the reconnection. This amount of CFDD is as much as *seven times greater* than what was being recorded for the same five-month period during previous years when the account was under the Complainant's name.⁵ There was no evidence presented that the Complainant changed any of his usage habits since having service reconnected. Thus, only a faulty meter or tampered meter could account for such a discrepancy

⁴ The tamper indicator goes from zero to three. Each time the meter is moved more than 60 degrees, the indicator moves to the next number. For example, if the indicator was originally set to "1" and it was moved more than 60 degrees three times, it would read "0". I stated the records indicate it was moved *at least* 69 times because if it was moved any multiple of four times in a month, the indicator would read the same number. Tr. 62-64.

⁵ See Finding of Fact No. 23.

in measured usage. However, if it was simply a faulty meter, there would be no physical evidence of tampering like that found by Mr. Howard. Consequently, I come to the same conclusion as PGW that the discrepancy in measured usage is the result of meter tampering.

Therefore, based on the loose ERT head and screws, missing red cap, damage to head mounts, significant tamper count from the internal tamper indicator, and significant discrepancy in measured usage after reconnection, I conclude the Respondent has presented convincing evidence that the Complainant's meter was tampered with while he was the customer of record. This convincing evidence was not rebutted by the Complainant other than his contention that he did not tamper with the meter, which I find unpersuasive given that "[m]ere bald assertions ... do not constitute evidence." *MidAtlantic 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*, 532 A.2d 12, 14 (Pa. 1987)). Accordingly, I find PGW was within its rights to terminate the Complainant's service for tampering with the meter.

Bypass Charges

In this case, the Respondent did not have accurate meter readings due to meter tampering, therefore, PGW issued a bill for previously unbilled usage based on the BTUs of the appliances found at the Service Address and historical weather data for the timeframe from December 20, 2005 through September 22, 2017. Originally, PGW billed the Complainant in the amount of \$12,846.96, based on the home having a gas water heater during this entire time frame. However, the Complainant presented evidence at the hearing that he had an electric water heater until he converted it to gas on October 16, 2016. As a result, PGW recalculated the Complainant's unbilled usage and reduced the amount due to \$8,777.75.

PGW is entitled to require the payment of the Complainant's entire outstanding balance up front as a condition to restore service in his name without the 4-year limit and without the payment arrangement requirements imposed by § 56.14 on cases that do not involve theft of service. *See* 52 Pa. Code § 56.191(d).

Tamper Indicator Investigation

Finally, it should be noted that based on Mr. Lipscomb's testimony, PGW records the number on the tamper indicator *each month* the meter is read electronically. Therefore, PGW was receiving monthly alerts *for over 10 years* that the meter in question was being moved, yet PGW never investigated why. In fact, PGW only discovered the tampering because they were there to perform a relight order. It is unreasonable to have a tamper indicator if you are not going to perform an investigation after you receive notice of a tamper, especially after a decade of monthly reports indicating tampering. This could be considered a failure to provide adequate and reasonable service in violation of 66 Pa.C.S. § 1501.

Nevertheless, I do not find it appropriate to impose a civil penalty in this case since the Complainant was not harmed by PGW's failure to investigate. In fact, it could be argued the Complainant actually benefited to a certain degree by being allowed to tamper with the meter for the past decade and delay having to pay for the full amount of gas used. Additionally, the PGW has already incurred a *de facto* penalty by not collecting the full amount it was owed over the past ten years. As a result, I do not see the benefit of imposing additional penalties at this time, but I would strongly recommend PGW reexamine its business practices as they relate to the investigation of meters showing tamper counts.

Conclusion

Based on the foregoing, I conclude that the Complainant was unable to meet his burden of proof that PGW wrongfully terminated his service for tampering with the meter, and PGW was entitled to bill the Complainant for unauthorized usage from December 20, 2005 through September 22, 2017, in the amount of \$8,777.75. 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. 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).

5. 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).

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

7. The Complainant failed to meet his burden of establishing that the Respondent erred in billing him for unbilled usage at the Service Address from December 20, 2005, through September 22, 2017, in the amount of \$8,777.75.

8. The Respondent failed to provide adequate and reasonable service in violation of the Public Utility Code when it failed to investigate monthly reports of meter tampering over a ten-year period. 66 Pa.C.S. § 1501.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Revised Bill Calculation received on April 5, 2018, is marked as PGW Exhibit 8 and entered into the record;
2. That the Complaint of Thomas DiAntonio against Philadelphia Gas Works at Docket No. F-2017-2634058, is dismissed; and
3. That the record at Docket No. F-2017-2634058 be marked closed.

Date: May 16, 2018

_____/s/
F. Joseph Brady
Administrative Law Judge