

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Philadelphia Gas Works	:	
(Complainant/Appellant)	:	
	:	
v.	:	F-2017-2611788
	:	
Kelvin E. Thomas	:	
(Respondent/Appellee)	:	
	:	
Kelvin E. Thomas	:	
	:	
v.	:	C-2017-2621275
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants the Complainant/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. This Initial Decision also dismisses Mr. Kelvin Thomas' formal Complaint for lack of prosecution.

## 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 Kelvin Thomas 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. The matter was docketed at Docket No. F-2017-2611788.

This matter is an appeal of a decision from BCS dated April 21, 2017, at Case No. 3491811, which granted in part the informal complaint of Mr. Thomas. BCS determined that PGW should reduce the amount of unauthorized usage from 4940 CCFs to 818 CCFs and that the time frame of unauthorized usage should be limited to April 28, 2015 (the date of the leak survey), to June 16, 2016. PGW desires to charge Mr. Thomas with unauthorized usage dating back to August 9, 2009, the date his gas service was terminated due to non-payment.

Mr. Thomas did not file an Answer to PGW's Complaint.

By Hearing Notice dated August 8, 2017, a hearing was scheduled for Thursday, October 12, 2017, at 10:00 a.m., and the matter was assigned to me.

On August 14, 2017, Mr. Thomas filed a formal Complaint with the Commission. Mr. Thomas alleged that there were incorrect charges on his bills and that PGW had overcharged him. Mr. Thomas was disputing the BCS decision at Case No. 3491811. The matter was docketed at Docket No. C-2017-2621275.

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 September 20, 2017, PGW filed an Answer to Mr. Thomas' Complaint. PGW denied the material allegations of the Complaint.

On September 27, 2017, Mr. Thomas filed an amended Complaint with the Commission which was substantially similar to his original complaint. PGW did not file an Answer to the amended Complaint.

On October 11, 2017, a hearing was scheduled for Docket No. C-2017-2621275 for Monday, January 15, 2018, at 10:00 a.m., and the matter was assigned to me.

On October 11, 2017, PGW filed a Motion for Continuance and Consolidation of Dockets. PGW requested a continuance of the October 12, 2017 hearing and also requested that its Complaint be consolidated with the formal Complaint filed by Mr. Thomas which was docketed at Docket No. C-2017-2621275, as it dealt with the same issues from the BCS decision. I granted the continuance request to consider the Motion for Consolidation and the hearing for October 12, 2017 was cancelled.

On November 30, 2017, a Hearing Cancellation/Reschedule Notice was issued for Docket No. C-2017-2621275, indicating that the initial hearing would take place on February 7, 2018.

On January 30, 2018, a Corrected Hearing Notice was issued indicating that the initial hearing for Wednesday, February 7, 2018 at 10:00 a.m. would be a consolidated hearing for the Complaints filed by PGW and Mr. Thomas.

On February 6, 2018, I issued an Order officially consolidating the matters for the hearing on February 7, 2018.

The hearing convened as scheduled on February 7, 2018. Mr. Thomas did not appear for the hearing. The Complainant/Appellant appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of four witnesses. The Complaint/Appellant offered seven exhibits which were entered into the record.

The hearing resulted in a transcript with a total of 62 pages. The record closed on February 27, 2018, when I received the transcript of the hearing.

### FINDINGS OF FACT

1. The Complainant/Appellant, and Respondent in this matter is Philadelphia Gas Works.
2. The Respondent/Appellee, and Complainant in this proceeding is Kelvin Thomas.
3. The Service Address is 4446 North Gratz Street, Philadelphia, Pennsylvania 19140 (Service Address). Tr. 12.
4. Mr. Thomas has owned the Service Address since 2000. Tr. 20-22; PGW Exh. 4.
5. Mr. Thomas placed the Service Address in a trust for his daughter, Alice Thomas, on January 23, 2009. Tr. 22-23; PGW Exh. 4.
6. Mr. Thomas has been associated with the Service Address since 1971 through November 2016. Tr. 57; PGW Exh. 7.
7. Timothy Sullivan is the PGW Superintendent of Revenue Protection and Field Operations. Tr. 27.

8. PGW terminated service at the Service Address on August 7, 2009, due to non-payment. Tr. 29; PGW Exh. 1.

9. At the time of the termination, Mr. Thomas was the customer of record for the Service Address. Tr. 29; PGW Exh. 1 & 3.

10. On June 8, 2016, PGW conducted a curb valve safety recheck. Tr. 31; PGW Exh. 1.

11. The PGW technician found the gas on and turned it off at the curb valve. Tr. 31; PGW Exh. 1.

12. On June 16, 2016, a PGW technician was at the Service Address for an Unbilled Usage Order and found the gas on at the curb valve and turned it off and installed an expander at the curb valve. Tr. 32; PGW Exh. 1.

13. On June 17, 2016, Mr. Thomas contacted PGW to request the restoration of his service. Tr. 34-35; PGW Exh. 2.

14. On June 22, 2016, Darnell Givens, field service technician, went to the Service Address on an unbilled usage investigation. Tr. 40; PGW Exh. 2.

15. Mr. Givens found the gas off at the Service Address. Tr. 41; PGW Exh. 2.

16. Mr. Givens found a gas house heater and gas hot water heater. Tr. 41; PGW Exh. 2.

17. Mr. Givens found a bypass on the service line. Tr. 42; PGW Exh. 2.

18. Mr. Givens found a natural gas reading of five in the fuel line to the appliances. Tr. 43-44, 45; PGW Exh. 2.

19. There should have been no gas reading in the fuel line because the service was supposed to be shut off. Tr. 44.

20. Mr. Givens removed the meter from the Service Address and used locking plugs and pill. Tr. 41; PGW Exh. 2.

21. Brandy Ritenour is a Staff Engineer in distribution maintenance and field services. Tr. 46.

22. Field Service Department employees conduct leak surveys for PGW. Tr. 48.

23. The walking leak survey is a program that PGW uses to detect any gas leaks that are found in any footway and service lines up to the front wall of a premises. Tr. 49.

24. The walking leak survey is not designed to detect if there is theft at a premises. Tr. 50.

25. The position of the curb valve does not matter in a walking leak survey, as the valve should not leak in either the on or off position. Tr. 50.

26. The presence of a leak on a service line does not indicate whether there is theft at a location. Tr. 51.

27. The leak survey conducted at the Service Address on April 28, 2015, did not find any leaks in the lines. Tr. 50.

28. PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 15; PGW Exh. 5.

29. For the historical usage analysis for the Service Address, PGW used the time period from September 5, 2008, to August 7, 2009, when Mr. Thomas was the customer of record. Tr. 15, 17; PGW Exh. 5.

30. Mr. Thomas was billed for unauthorized usage from August 7, 2009, to June 16, 2016, in the amount of \$8,228.29. Tr. 16, 18; PGW Exh. 5.

31. PGW is requesting \$8,731.52 for restoration of service, which includes the unauthorized charges, a security deposit of \$380.00, and a reconnection fee of \$123.23. Tr.18; PGW Exh. 5.

32. Mr. Thomas had notice of the hearing through the Hearing Notice dated November 30, 2017.

33. The Hearing Notices dated November 30, 2017, and January 30, 2018, were not returned as being undeliverable by the United States Postal Authority.

34. Mr. Thomas did not appear for the hearing.

35. Mr. Thomas did not contact the presiding officer to request a continuance of the hearing or to request the withdrawal of his Complaint.

### 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 bill for unauthorized usage. 52 Pa.Code § 56.403(a). The term “*de novo*” simply means “anew” or “over again.”

#### Tampering Allegations at Docket No. F-2017-2611788

PGW contends that the BCS erred in its decision which limited the time frame of unauthorized usage at the Service Address from April 28, 2015 (the date of the leak survey), to June 16, 2016. PGW argues that there was unauthorized usage which dated back to August 7, 2009, when service was terminated for non-payment.

PGW presented the testimony of Timothy Sullivan, Superintendent of Revenue Protection and Field Operations. Tr. 27. Mr. Sullivan testified that PGW terminated service at

the Service Address on August 7, 2009, due to non-payment. Tr. 29; PGW Exh. 1. At the time of the termination, Mr. Thomas was the customer of record for the Service Address. Tr. 29; PGW Exh. 1 & 3. On June 8, 2016, PGW conducted a curb valve safety recheck. Tr. 31; PGW Exh. 1. The PGW technician found the gas on and turned it off at the curb valve. Tr. 31; PGW Exh. 1. On June 16, 2016, a PGW technician was at the Service Address for an Unbilled Usage Order and found the gas on and turned it off and installed an expander at the curb valve. Tr. 32; PGW Exh. 1. On June 17, 2016, Mr. Thomas contacted PGW to request the restoration of his service. Tr. 34-35; PGW Exh. 2.

PGW also presented the testimony of Field Service Technician, Darnell Givens. On June 22, 2016, Mr. Givens went to the Service Address on an unbilled usage investigation. Tr. 40; PGW Exh. 2. Mr. Givens found the gas off at the Service Address. Tr. 41; PGW Exh. 2. Mr. Givens found a gas house heater and gas hot water heater. Tr. 41; PGW Exh. 2. Mr. Givens found a bypass on the service line. Tr. 42; PGW Exh. 2. Mr. Givens found a natural gas reading of five in the fuel line to the appliances. Tr. 43-44, 45; PGW Exh. 2. There should have been no gas reading in the fuel line because the service was shut off. Tr. 44. Mr. Givens removed the meter from the Service Address and used locking plugs and pill. Tr. 41; PGW Exh. 2.

PGW presented the testimony of Jessica Glace, a Senior Customer Review Officer. Ms. Glace presented testimony regarding Mr. Thomas' association with the Service Address. Mr. Thomas has owned the Service Address since 2000. Tr. 20; PGW Exh. 4. Mr. Thomas placed the Service Address in a trust for his daughter, Alice Thomas, on January 23, 2009. Tr. 22-23; PGW Exh. 4. Mr. Thomas was associated with the Service Address from 1971 through November 2016. Tr. 57; PGW Exh. 7.

PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 15; PGW Exh. 5. For the historical usage analysis for the Service Address, PGW used the time period from September 5, 2008, to August 7, 2009, when Mr. Thomas was the customer of record. Tr. 15, 17; PGW Exh. 5. Mr. Thomas was billed for unauthorized usage from August 7, 2009, to June 16, 2016, in the amount of \$8,228.29. Tr. 16, 18; PGW Exh. 5.

PGW is requesting \$8,731.52 for restoration of service, which includes the unauthorized charges, a security deposit of \$380.00, and a reconnection fee of \$123.23. Tr.18; 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).

Mr. Thomas did not appear for the hearing or present any evidence to rebut PGW’s allegations.

Based on the above, PGW has met its burden of proof in this matter. PGW established that Mr. Thomas has been associated with the Service Address since 1971 and was the customer of record at the time service was terminated for non-payment in August 2009. Mr. Thomas also contacted PGW in June 2016 after service was shut off again, to have the service restored. There were gas appliances at the Service Address, including a house heater and hot water heater. Mr. Givens found a bypass on the service line. Tr. 42; PGW Exh. 2. Mr. Givens found a natural gas reading of five in the fuel line to the appliances. Tr. 43-44, 45; PGW Exh. 2. Mr. Givens established that there should have been no gas reading in the fuel line because the service was supposed to be shut off. Tr. 44. PGW also presented testimony and evidence that Mr. Thomas 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 Mr. Thomas was associated with the Service Address, and that PGW had grounds to immediately terminate service on June 16, 2016, for tampering. The Company did nothing wrong by charging Mr. Thomas for the unauthorized usage.

### Leak Survey

PGW argues that BCS erred in its decision which limited the period of unauthorized usage to the time period between April 28, 2015, to June 16, 2016, based on the leak survey that the Company conducted on April 28, 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 Brandy Ritenour, a Staff Engineer in distribution maintenance and field services. Tr. 46. Field Service Department employees conduct leak surveys for PGW. Tr. 48. The walking leak survey is a program that PGW uses to detect any gas leaks that are found in this case in any footway mains and service lines up to the front wall of a premises. Tr. 49. The walking leak survey is not designed to detect if there is theft at a premises. Tr. 50. The position of the curb valve does not matter in a walking leak survey, as the valve should not leak in either the on or off position. Tr. 50. The presence of a leak on a service line does not indicate whether there is theft at a location. Tr. 51. The leak survey conducted at the Service Address on April 28, 2015, did not find any leaks in the lines. Tr. 50.

The Commission's regulations indicate that the public utilities must conduct leak surveys to the meter set up. 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 Commission's Regulations or the record that the leak survey was designed to identify unauthorized usage. Ms. Ritenour's testimony indicates that even if a leak was detected at a premises, there is nothing to indicate that it would be related to theft. Therefore, the BCS decision erred in limiting the time frame for the unauthorized usage beginning at the point when the leak survey was conducted on April 28, 2015. As such, the Respondent/Appellee is responsible for the total bill for unauthorized usage from August 7, 2009, to June 16, 2016, in the amount of \$8,228.29.

Mr. Thomas' Complaint at Docket No. C-2017-2621275

Mr. Thomas did not appear for the hearing or present any evidence on behalf of his Complaint. Mr. Thomas had adequate notice of the hearing on February 7, 2018, through the Hearing Notice dated November 30, 2017. Mr. Thomas did not request a continuance or postponement of the hearing or request to withdraw his Complaint. Under Section 5.245 of the

Pennsylvania Code, if the presiding officer finds, after notice and opportunity for hearing, that the actions of a party in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint. 52 Pa.Code § 5.245(c). As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002), “It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” See, *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa. Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party’s own negligence is not sufficient good cause as a matter of law for failing to appear at a . . . hearing.” *Eat’N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa. Cmwlth. 2008).

Due to the waste of the Commission’s and Respondent’s time, money, and energy occasioned by the Complainant’s failure to appear at a hearing of which he had notice, Mr. Thomas’ Complaint will be dismissed with prejudice in accordance with well-established Commission precedent. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *Evans v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957229 (Opinion and Order entered July 12, 1996); *King v. PECO Energy Co*, Docket No. C-00967919 (Opinion and Order entered January 16, 1997); *Kenny v. PPL Electric Utilities Corporation*, Docket No. C 20042399 (Final Order entered October 13, 2004); *Jones v. Peoples Natural Gas Company*, Docket No. C-20054885 (Opinion and Order entered February 14, 2006); *El-Ayazra v. West Penn Power Company*, Docket No. F-2509292 (Opinion and Order entered June 30, 2016).

#### 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 formal Complaint may be dismissed if, after notice and opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. 52 Pa.Code § 5.245(c). *See also, Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

6. The failure of the Complainant to appear for a scheduled hearing of which he had notice warrants dismissal of the Complaint with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

7. 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).

8. 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).

9. 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.

10. 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).

11. 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).

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

13. The Appellant met its burden of establishing that the Company correctly billed the Respondent for unauthorized usage at the Service Address from August 7, 2009, to June 16, 2016, based on historical usage at the premises.

14. 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 Complaint of Philadelphia Gas Works v. Kelvin E. Thomas at Docket No F-2017-2611788 is granted;

2. That the decision from the Bureau of Consumer Services dated April 21, 2017, at Case No. 3491811, is vacated.

3. That Kelvin E. Thomas is responsible for the unauthorized charges from August 7, 2009, to June 16, 2016, in the amount of \$8,228.29; and

4. That the record at Docket No. F-2017-2611788 be marked closed.

5. That the Complaint of Kelvin E. Thomas v. Philadelphia Gas Works at Docket No. C-2017-2621275 is dismissed with prejudice.

6. That the record at Docket No. C-2017-2621275 be marked closed.

Date: May 29, 2018

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/s/  
Marta Guhl  
Administrative Law Judge