

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ajah Baker	:	
	:	
v.	:	C-2018-3002681
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Complainant’s formal Complaint because she failed to sustain her burden of proof to establish that Philadelphia Gas Works wrongly determined that there was theft of service when there was evidence of tampering or that it erred in billing her for unbilled usage at the Service Address.

HISTORY OF THE PROCEEDING

On June 13, 2018, Ajah Baker (Complainant or Ms. Baker) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant requests that the unproven allegations of unauthorized usage be removed from her account and that the Company refund the money that she paid related to the unauthorized usage.

This matter is an untimely appeal of a decision from the Bureau of Consumer Services (BCS) dated April 4, 2018, at Case No. 3595931, which dismissed the informal complaint of the Complainant.

On July 3, 2018, the Respondent filed an Answer indicating that the gas service at the Service Address was initially terminated on August 5, 2015, at the Complainant's request. The Respondent asserts that on March 14, 2018, it found the gas on and again shut off service, at the meter bar. The Respondent alleges that on the same date it found that the encoder receiver transmitter (ERT) head had been removed from the meter, rendering it unable to transmit gas usage. The Respondent indicates that it assessed the Complainant \$5,877.30 for the period from August 5, 2015 to March 14, 2018, for unauthorized usage.

By Hearing Notice dated July 11, 2018, a hearing was scheduled for Thursday, August 23, 2018, at 10:00 a.m., and the matter was assigned to me.

On July 12, 2018, 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 she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on August 23, 2018. Complainant appeared *pro se* and testified. The Complainant also offered three exhibits which were not entered into the record at the hearing.¹ Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of four witnesses. Respondent offered seven exhibits which were entered into the record.

¹ The Complainant offered three typed and signed statements from people who provided housing to her and her children during the time period at issue. However, PGW objected on the basis of hearsay and I sustained the objection.

The hearing resulted in a transcript of 132 pages. The record closed on September 28, 2018, when I received the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Ajah Baker who resides at 5206 C Street, Philadelphia, Pennsylvania 19120 (Service Address). Tr. 8.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant had gas service at the Service Address discontinued on August 5, 2015 due to financial issues. Tr. 9, 111; PGW Exh. 2.
4. The Complainant owns the Service Address. Tr. 12.
5. Kevin Graves, a field service technician with PGW, visited the Service Address on March 14, 2018, to check for gas leaks. Tr. 47, 54; PGW Exh. 3.
6. Mr. Graves found the gas on and turned it off. Tr. 48; PGW Exh. 3.
7. Mr. Graves also found that the meter did not have an ERT head. Tr. 48; PGW Exh. 3.
8. The absence of an ERT head is an indication of tampering. Tr. 57.
9. On March 28, 2018, Zachary Johnson, a field service technician with PGW, visited the Service Address on an unbilled usage investigation. Tr. 60; PGW Exh. 5.
10. Mr. Johnson found a gas house heater which was 52,000 BTUs, a gas range which was 65,000 BTUs, and a gas hot water heater which was 40,000 BTUs at the Service Address. Tr. 62; PGW Exh. 5.

11. Mr. Johnson found that the appliances were operational at the time of his visit. Tr. 64; PGW Exh. 5.

12. Mr. Johnson also found that there were gas readings in the line from the meter to the appliances at 50 lower explosive level (LEL). Tr. 65; PGW Exh. 5.

13. It takes approximately seven to ten days for gas to dissipate from the service line. Tr. 66.

14. Since the service had been terminated in August 2015, there should not have been any gas readings when Mr. Johnson visited the Service Address. Tr. 66.

15. Mr. Johnson removed the meter from the Service Address. Tr. 71; PGW Exh. 5.

16. The ERT head was on the meter at the time Mr. Johnson removed it from the Service Address. Tr. 75.

17. Gas service was abandoned at the Service Address on March 22, 2018, which means that the Company dug up the street to cut service from the main line since the Service Address did not have a curb valve. Tr. 68-69; PGW Exh. 5.

18. Richard Lipscomb, Supervisor in Field Service for the Revenue Protection Department at PGW, visited the Service Address on April 3, 2018. Tr. 89.

19. Mr. Lipscomb did not find any alternative sources of fuel in the Service Address. Tr. 89-90.

20. Mr. Lipscomb did not find any other heating or cooking sources. Tr. 89-90.

21. Mr. Lipscomb also noted that the red caps on the screws for the ERT head were missing. Tr. 97.

22. PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 116, 120; PGW Exh. 6.

23. The historical usage analysis for the Service Address was from August 20, 2014 to July 21, 2015, when the Complainant was the customer of record. Tr. 120; PGW Exh. 7.

24. On April 3, 2018, the Complainant was billed for unauthorized usage from August 5, 2015 to March 14, 2018, in the amount of \$5,877.30. Tr. 116; PGW Exhs. 6 and 7.

25. The Complainant also had a balance of \$1,390.18 when service was terminated in August of 2015. Tr. 116; PGW Exh. 6.

26. The Complainant paid her prior outstanding balance (\$1,390.18), unauthorized usage charges (\$5,877.30), reconnection fee (\$123.23), and dig fee (\$372.00) to have service restored on April 11, 2018. Tr. 117; PGW Exh. 6.

27. The Complainant's balance at the time of the hearing was \$29.58. Tr. 117; PGW Exh. 6.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, Complainant must show that the respondent public 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). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (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*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa.Super. 278, 166 A.2d 96 (1960); *Murphy v. Commonwealth, Dep't of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Tampering Allegations

The Complainant denied tampering with the utility service at the Service Address, alleging that she used alternative sources of heat and other cooking methods after she had her gas turned off in August of 2015. Tr. 12-13. The Complainant also contended that she and her

children would leave the Service Address and live at other locations when it became too cold. Tr. 12-13. The Complainant acknowledged that she owns the Service Address. Tr. 12. The Respondent asserts that Ms. Baker was the responsible party because she is the owner of the Service Address and the service had been previously turned off at the Service Address in 2015 and should have been off when the premises were checked in March 2018.

To dispute the allegations of the Complainant, PGW presented the testimony of Field Service Technician, Kevin Graves. On March 14, 2018, Mr. Graves went to the Service Address to check for gas leaks. Tr. 47, 54; PGW Exh. 3. Mr. Graves found the gas on and turned it off. Tr. 48; PGW Exh. 3. Mr. Graves also found that the meter did not have an ERT head. Tr. 48; PGW Exh. 3. Mr. Graves noted that the absence of an ERT head is an indication of tampering. Tr. 57.

PGW also presented the testimony of Zachary Johnson, who is also a Field Service Technician. Tr. 60. On March 28, 2018, Mr. Johnson visited the Service Address on an unbilled usage investigation. Tr. 60; PGW Exh. 5. Mr. Johnson found a gas house heater which was 52,000 BTUs, a gas range which was 65,000 BTUs, and a gas hot water heater which was 40,000 BTUs at the Service Address. Tr. 62; PGW Exh. 5. Mr. Johnson found that the appliances were operational at the time of his visit. Tr. 64; PGW Exh. 5. Mr. Johnson also found that there were gas readings in the line from the meter to the appliances at 50 lower explosive level (LEL). Tr. 65; PGW Exh. 5. Mr. Johnson noted that it takes approximately seven to ten days for gas to dissipate from the service line. Tr. 66. Mr. Johnson testified that since the service had been terminated in August 2015, there should not have been any gas readings when Mr. Johnson visited the Service Address. Tr. 66. Mr. Johnson removed the meter from the Service Address. Tr. 71; PGW Exh. 5. He also noted that the ERT head was on the meter at the time he removed it from the Service Address. Tr. 75. Lastly, Mr. Johnson testified that gas service was abandoned at the Service Address on March 22, 2018, which means that the Company dug up the street to cut service from the main line since the Service Address did not have a curb valve. Tr. 68-69; PGW Exh. 5.

PGW also presented the testimony of Richard Lipscomb, a Supervisor in Field Service for the Revenue Protection Department. Mr. Lipscomb visited the Service Address on April 3, 2018. Tr. 89. Mr. Lipscomb did not find any alternative sources of fuel in the Service Address. Tr. 89-90. Mr. Lipscomb did not find any other heating or cooking sources. Tr. 89-90. Mr. Lipscomb also noted that the red caps on the screws for the ERT head were missing, which is evidence of tampering. Tr. 97.

PGW presented the testimony of Tiffany Jones, a Senior Customer Review Officer. Ms. Jones testified that the gas service at the Service Address was terminated at the Complainant's request on August 5, 2015. Tr. 111; PGW Exh. 2. The Complainant had a balance when service was terminated in August 2015 of \$1,390.18. Tr. 116; PGW Exh. 6.

PGW issued a bill for previously unbilled usage based on historical usage at the Service Address. Tr. 116, 120; PGW Exh. 6. The historical usage analysis for the Service Address was from August 20, 2014 to July 21, 2015, when the Complainant was the customer of record. Tr. 120; PGW Exh. 7. On April 3, 2018, the Complainant was billed for unauthorized usage from August 5, 2015 to March 14, 2018, in the amount of \$5,877.30. Tr. 116; PGW Exhs. 6 and 7. The Complainant paid her prior outstanding balance (\$1,390.18), unauthorized usage charges (\$5,877.30), reconnection fee (\$123.23), and dig fee (\$372.00) to have service restored on April 11, 2018. Tr. 117; PGW Exh. 6. The Complainant's balance at the time of the hearing was \$29.58. Tr. 117; PGW Exh. 6.

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).

While the Complainant contends that she had nothing to do with the tampering, I am not persuaded by her testimony. It is well settled, “[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.Cmwlt. 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). The Complainant is the owner of the Service Address. There were gas appliances at the Service Address, including a house heater, hot water heater, and a range. On March 14, 2018, Mr. Graves found the gas on and turned it off. Tr. 48; PGW Exh. 3. Mr. Graves also found that the meter did not have an ERT head. Tr. 48; PGW Exh. 3. Mr. Graves noted that the absence of an ERT head is an indication of tampering. Tr. 57. Further, Mr. Johnson found that the appliances were operational at the time of his visit on March 28, 2018. Tr. 64; PGW Exh. 5. Mr. Johnson also found that there were gas readings in the line from the meter to the appliances at 50 LEL. Tr. 65; PGW Exh. 5. Mr. Johnson noted that it takes approximately seven to ten days for gas to dissipate from the service line. Tr. 66. Mr. Johnson testified that since the service had been terminated in August 2015, there should not have been any gas readings when Mr. Johnson visited the Service Address. Tr. 66. Lastly, Mr. Lipscomb did not find any alternative sources of fuel in the Service Address. Tr. 89-90. Mr. Lipscomb did not find any other heating or cooking sources. Tr. 89-90. Mr. Lipscomb also noted that the red caps on the screws for the ERT head were missing, which is evidence of tampering. Tr. 97.

Therefore, since PGW was able to demonstrate that there was tampering at the Service Address based on the natural gas reading, the missing ERT head and the missing red caps, I conclude that there was tampering with the service while the Complainant owned the Service Address, and that PGW had grounds to abandon service. The customer of record is responsible for the tampering at their premises regardless of if they had knowledge of the tampering or not. *Vanessa Kull v Philadelphia Gas Works*, Docket No. C-2013-2379510 (Final Order entered May 30, 2014). The Company did nothing wrong charging the Complainant for the unauthorized usage. As such, the Complainant is responsible for the unauthorized usage from August 5, 2015, to March 14, 2018, in the amount of \$5,877.30. Further, the Complainant paid this amount and gas service was restored on April 11, 2018. There are no other

unauthorized charges on her account. The Complainant does not challenge PGW's calculation of the unauthorized usage, which was based on the Complainant's own historical usage. 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. Pursuant to 66 Pa.C.S. § 332(a), 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. 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).

6. "Mere 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).

7. The customer of record is responsible for the tampering at their premises regardless of if they had knowledge of the tampering or not. *Vanessa Kull v Philadelphia Gas Works*, Docket No. C-2013-2379510 (Final Order entered May 30, 2014).

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

9. The Complainant failed to meet her burden of establishing that the Company erred in billing her for unauthorized usage at the Service Address from August 5, 2015 to March 14, 2018, based on historical usage at the premises.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Ajah Baker against Philadelphia Gas Works at Docket No. C-2018-3002681 is denied and dismissed;

2. That the docket at Docket No. C-2018-3002681 be marked closed.

Date: December 18, 2018

_____/s/
Marta Guhl
Administrative Law Judge