

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas Tappeh	:	
	:	
v.	:	C-2018-3002715
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Complainant’s formal Complaint because he failed to sustain his 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 the Company erred in billing him for unbilled usage at the Service Address.

**HISTORY OF THE PROCEEDING**

On June 14, 2018, Thomas Tappeh (Complainant or Mr. Tappeh) 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 alleges that the utility was threatening to or had shut off his utility service and requests a payment arrangement. The Complainant also asserts that there was an allegation of theft, which the Complainant denies. The Complainant also acknowledges that he does owe PGW some money.

This matter is an untimely appeal of a decision from the Bureau of Consumer Services (BCS) dated April 23, 2018, at Case No. 3600052, which dismissed the informal complaint of the Complainant.

On July 5, 2018, Respondent filed an Answer indicating that the gas service at the Service Address was initially terminated at the curb valve on July 31, 2017 due to non-payment. The Respondent asserts that on March 27, 2018, it found the gas on and again shut off service, at the curb valve with an expander. The Respondent indicates that it assessed the Complainant \$1,542.05 for the period from October 26, 2017, to March 27, 2018, for unauthorized usage.

By Hearing Notice dated July 9, 2018, a hearing was scheduled for Friday, August 24, 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 he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on August 24, 2018. Complainant appeared *pro se* and testified. The Complainant also offered the testimony of one witness. Respondent appeared and was represented by Laureto Farinas, Esq., who presented the testimony of two witnesses. Respondent offered six exhibits which were entered into the record.

The hearing resulted in a transcript of 64 pages. The record closed on October 3, 2018, when I received the hearing transcript.

#### FINDINGS OF FACT

1. The Complainant in this case is Thomas Tappeh, who resides at 2917 South 67<sup>th</sup> Street, Philadelphia, Pennsylvania 19142 (Service Address). Tr. 7.

2. The Respondent in this proceeding is Philadelphia Gas Works.
3. The Complainant owns the Service Address, which he purchased in 1999.  
Tr. 20.
4. Four adults (including Complainant) and two children reside at the Service Address. Tr. 12.
5. The Complainant receives \$1,400.00 per month in Social Security benefits. Tr. 14.
6. The Complainant also works 20 hours per week for UPS at \$13.00 per hour.<sup>1</sup> Tr. 14-15.
7. None of the other adults in the household has any other sources of income. Tr. 14-15.
8. The Complainant's current household income of \$2,527.00<sup>2</sup> per month for a six-person household places the household income at 90% of the Federal Poverty guidelines.<sup>3</sup>
9. Gas service at the Service Address was terminated at the curb box on July 31, 2017 due to non-payment with a final meter reading of 4403. Tr. 42; PGW Exh. 3.
10. At the time the service was terminated, service was in the name of Etta Nuah, the Complainant's niece who currently lives with him. Tr. 12, 27, 42; PGW Exh. 3.

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<sup>1</sup> The Complainant's monthly income from UPS is  $20 \times \$13 = \$260$  per week  $\times 52 = \$13,520.00$  per year / 12 = \$1,127.00 per month.

<sup>2</sup> Total monthly income is  $\$1,400 + \$1,127 = \$2,527.00$ .

<sup>3</sup> *Federal Register*, Vol. 83, No. 12, January 18, 2018, pp. 2642-2644. Also see <http://aspe.hhs.gov/poverty>.

11. The Complainant attempted to have service placed in his name and paid the reconnection fee of \$123.23 on November 20, 2017. Tr. 46-47; PGW Exh. 5.

12. On November 24, 2017, a turn on appointment was scheduled (before the unauthorized usage was discovered) but the technician was not able to gain entrance to the Service Address. Tr. 47.

13. After service was terminated, the meter continued to register usage, which is noted as follows:

Date	Meter Reading
September 27, 2017	4403
October 26, 2017	4403
November 28, 2017	4442
December 29, 2017	4692
January 31, 2018	5028
March 1, 2018	5254
March 27, 2018	5471

Tr. 43; PGW Exh. 4A.

14. Nathaniel Shrieves, a field service technician with PGW, visited the Service Address on March 27, 2018, on an unbilled usage investigation. Tr. 52; PGW Exhs. 1 and 2.

15. Mr. Shrieves found the gas on and turned it off and locked it with an expander at the curb box. Tr. 54-55; PGW Exhs. 1 and 2.

16. Mr. Shrieves also took a meter reading with an Itron device. Tr. 54; PGW Exhs. 1 and 2.

17. There was a substantial amount of gas usage at the Service Address after the service had been terminated, which would demonstrate tampering. Tr. 56.

18. On April 4, 2018, the Complainant was billed for unauthorized usage from October 26, 2017, to March 27, 2018, in the amount of \$1,542.05, based on the meter readings from July 31, 2017 and March 27, 2018 (4403 to 5471). Tr. 45-46; PGW Exhs. 4A and 5.

19. There is also an outstanding balance from the account of Etta Nuah in the amount of \$3,531.01. Tr. 37-38; PGW Exhs. 3 and 4.

20. The Complainant has made some payments on the unauthorized usage charges and the remaining amount of unauthorized usage charges is \$1,162.05. Tr. 37; PGW Exh. 5.

21. To restore service, PGW requires the remaining balance of the unauthorized usage charges to be paid in full. Tr. 38.

### 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.Cmwlt. 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 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).

### Tampering Allegations

The Complainant denied tampering with the utility service at the Service Address, alleging that he does not have the technical skills to turn on the gas. The Complainant acknowledged that he owns the Service Address. Tr. 20. Ms. Nuah, the Complainant's witness, testified that she resided at the Service Address and had gas service in her name at that address. Tr. 29. Ms. Nuah indicated that the gas service was terminated and that the Complainant was going to take responsibility for the account. Tr. 30. The Respondent asserts that Mr. Tappeh is the responsible party because he is the owner of the Service Address and the service had been

previously turned off at the Service Address in July 2017 and should have been off when the premises was checked on March 27, 2018.

To dispute the allegations of the Complainant, PGW presented the testimony of Field Service Technician, Nathaniel Shrieves. On March 27, 2018, Mr. Shrieves visited the Service Address on an unbilled usage investigation. Tr. 52; PGW Exhs. 1 and 2. Mr. Shrieves found the gas on and turned it off and locked it with an expander at the curb box. Tr. 54-55; PGW Exhs. 1 and 2. Mr. Shrieves also took a meter reading with an Itron device. Tr. 54; PGW Exhs. 1 and 2. Mr. Shrieves noted that there was a substantial amount of gas usage at the Service Address after the service had been terminated which would demonstrate tampering. Tr. 56.

PGW presented the testimony of Jessica Glace, a Senior Customer Review Officer. Ms. Glace testified that the gas service at the Service Address was terminated on July 31, 2017, due to non-payment at the curb box with a final meter reading of 4403. Tr. 42; PGW Exh. 3. At the time the service was terminated, service was in the name of Etta Nuah, the Complainant's niece who currently lives with him. Tr. 12, 27, 42; PGW Exh. 3. After service was terminated, the meter continued to register usage, which is noted as follows:

Date	Meter Reading
September 27, 2017	4403
October 26, 2017	4403
November 28, 2017	4442
December 29, 2017	4692
January 31, 2018	5028
March 1, 2018	5254
March 27, 2018	5471

Tr. 43; PGW Exh. 4A.

The Complainant attempted to have service placed in his name and paid the reconnection fee of \$123.23 on November 20, 2017. Tr. 46-47; PGW Exh. 5. On November 24,

2017, a turn on appointment was scheduled (before the unauthorized usage was discovered) but the technician was not able to gain entrance to the Service Address. Tr. 47. The unauthorized usage was discovered on March 27, 2018. On April 4, 2018, the Complainant was billed for unauthorized usage from October 26, 2017, to March 27, 2018, in the amount of \$1,542.05, based on the meter readings from July 31, 2017 and March 27, 2018, (4403 to 5471). Tr. 45-46; PGW Exhs. 4A and 5. There is also an outstanding balance from the account of Etta Nuah in the amount of \$3,531.01. Tr. 37 38; PGW Exhs. 3 and 4.

While the Complainant contends that he had nothing to do with the tampering, I am not persuaded by his 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. The gas service was terminated on July 31, 2017 at the curb box for non-payment. On March 27, 2018, Mr. Shrieves visited the Service Address on an unbilled usage investigation. Tr. 52; PGW Exhs. 1 and 2. Mr. Shrieves found the gas on and turned it off and locked it with an expander at the curb box. Tr. 54-55; PGW Exhs. 1 and 2. Mr. Shrieves also took a meter reading with an Itron device. Tr. 54; PGW Exhs. 1 and 2. Mr. Shrieves noted that there was a substantial amount of gas usage at the Service Address after the service had been terminated which would demonstrate tampering. Tr. 56. The usage at the Service Address continued after service was terminated in July 2017, as evidenced by the chart above.

Therefore, since PGW was able to demonstrate that there was tampering at the Service Address based on the continued gas usage at the Service Address despite the termination of service on July 31, 2017, I conclude that there was tampering with the service while the Complainant owned the Service Address. The Complainant’s Complaint must be dismissed in this regard.



## Restoration of Service

The Complainant attempted to have service placed in his name and paid the reconnection fee of \$123.23 on November 20, 2017. Tr. 46-47; PGW Exh. 5. On November 24, 2017, a turn on appointment was scheduled (before the unauthorized usage was discovered) but the technician was not able to gain entrance to the Service Address. Tr. 47. Therefore, the Complainant is an applicant for service in this matter.

The unauthorized usage was discovered on March 27, 2018. Then, on April 4, 2018, the Complainant was billed for unauthorized usage from October 26, 2017, to March 27, 2018, in the amount of \$1,542.05, based on the meter readings from July 31, 2017 and March 27, 2018, (4403 to 5471). Tr. 45-46; PGW Exhs. 4A and 5. The Complainant has made some payments on the unauthorized usage charges and the remaining amount of unauthorized usage charges is \$1,162.05. Tr. 37; PGW Exh. 5. To restore service, PGW requires the remaining balance of the unauthorized usage charges to be paid in full. Tr. 38.

Section 1407 of the Public Utility Code states in pertinent part:

(d) Payment of outstanding balance at premises. --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.

(e) Approval. --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.

Further, Section 56.35(b) of the Commission's regulations states the following:

(b) A public utility may not require, as a condition of the furnishing of residential service, payment for residential service previously furnished under an account in the name of a person other than the applicant, except as provided for in paragraphs (1) and (2).

(1) A public utility may require the payment of an 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, not exceeding 4 years from the date of the service request. The 4-year limit does not apply if the balance includes amounts that the utility was not aware of because of fraud or theft on the part of the applicant.

(2) 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. Public utilities shall include in their tariffs filed with the Commission the methods, other than those specifically mentioned in this paragraph, used to determine the applicant's liability for any outstanding balance.

52 Pa.Code § 56.35(b).

Lastly, a public utility can require the payment of any 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 or customer resided there, not exceeding four years prior to the date of requesting that service be restored. However, the four-year limit does not apply in instances of fraud and theft. 52 Pa.Code § 56.191(d).

I conclude, pursuant to the above-cited sections, that the Company may require the Complainant to pay for the unauthorized usage prior to restoring service at the Service Address. 66 Pa.C.S. § 1407, 52 Pa.Code §§ 56.35(b) and 56.191(d). As such, the Complainant is responsible for the unauthorized usage from October 26, 2017, to March 27, 2018, in the amount of \$1,542.05. It should again be noted that the Complainant has already paid the reconnection fee of \$123.23 and has made some payments on the unauthorized usage balance. Currently, PGW is requesting that the amount of \$1,162.05 in remaining unauthorized charges be

paid in full before service is restored. There is no indication that PGW is in violation of the Public Utility Code or Commission regulations or Order in requiring that this remaining balance be paid in full before service is restored. *See* 52 Pa.Code § 56.191(d). Accordingly, the Complainant's Complaint must be dismissed in this regard.

### Payment Arrangement

Further, the Complainant is not entitled to a payment arrangement in this matter. In *Darnell Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015), the Commission stated the following: "We do not believe a payment arrangement is appropriate when the person requesting the arrangement was involved in a theft of utility service while residing at the service location." Order at 8. The Commission decided that Mr. Fassett should not receive a Commission-ordered payment arrangement because he resided at the property while the unauthorized gas usage occurred. Since the Complainant was residing at the Service Address at the time the theft took place, he is not entitled to a Commission-issued payment arrangement. As such, the Complainant's request for a payment arrangement must be denied and dismissed in this matter.

### 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. 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).

5. 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.

6. A public utility may not require as a condition of providing service, payment of an outstanding balance for an account in the name of a person other than the applicant unless the applicant resided at the property where service is being requested during the time period the prior outstanding balance accrued and for the time the applicant resided for a period of four years from the date of the service request. The four-year limit does not apply in instances of fraud or theft on the part of the applicant. 52 Pa.Code § 56.35(b)(1).

7. The public utility can establish the applicant previously resided at the address where service is requested through a mortgage or deed. 52 Pa.Code § 56.35(b)(2).

8. “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).

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

10. The Complainant failed to meet his burden of establishing that the Company erred in billing him for unauthorized usage from October 26, 2017, to March 27, 2018, based on meter readings from the Service Address.

11. A payment arrangement is not “...appropriate when the person requesting the arrangement was involved in theft of utility service while residing at the service location.” *Darnell Fassett v. Philadelphia Gas Works*, Docket No. F-2014-2408541 (Opinion and Order entered April 27, 2015).

12. The Complainant has not met his burden of establishing that he is eligible for a payment arrangement in this matter.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Thomas Tappah against Philadelphia Gas Works at Docket No. C-2018-3002715 is denied and dismissed;

2. That the docket at Docket No. C-2018-3002715 be marked closed.

Date: December 21, 2018

\_\_\_\_\_/s/  
Marta Guhl  
Administrative Law Judge