

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Erica Brown	:	
	:	
v.	:	F-2018-3004509
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Complaint, finding that the Complainant did not meet her burden of proving that her service was wrongfully terminated for meter tampering or that she was wrongfully billed for unbilled usage as a result of meter tampering. The Complaint is also dismissed with respect to its payment arrangement request.

**HISTORY OF THE PROCEEDING**

On September 4, 2018, Erica Brown (Complainant or Ms. Brown) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). PGW terminated Ms. Brown's service following the discovery of meter tampering at her service address. Ms. Brown denies that she tampered with her gas meter. To paraphrase Ms. Brown's argument in her Complaint, Ms. Brown argues that her service was wrongfully terminated because she was not the one to tamper with her meter and that she is not responsible for the charges assessed to her because of the tampering. Alternatively, Ms. Brown would like to be placed on a payment plan to help pay the meter tampering bypass charges. Ultimately, Ms. Brown wants her service to be restored. The

Complaint is a timely appeal of a decision from the Commission's Bureau of Consumer Services (BCS) at BCS No. 3634171.

The Respondent filed an Answer on September 26, 2018. The Respondent stated that a PGW technician was sent to the service address on a meter usage investigation and found the encoder receiver transmitter (ERT) head removed from the gas meter. As a result, the PGW technician shut off the gas at the service address. PGW proceeded to bill the Complainant meter bypass charges based off of historical usage of the appliances found at the service address. In order for her service to be restored, the Complainant would have to pay the bypass charges plus a reconnection fee. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice issued October 23, 2018, the Commission scheduled this matter for a call-in telephonic hearing on November 15, 2018, at 10:00 a.m., and assigned the case to me.

I issued a Prehearing Order on October 24, 2018, addressing, inter alia, the method by which the parties could call-in to participate in the hearing and the procedures applicable to the hearing.

I conducted the November 15, 2018, telephonic hearing as scheduled. The Complainant was present and testified on her own behalf. The Complainant presented no exhibits for the record. Attorney Laureto Farinas was present at the hearing on behalf of the Respondent and presented the testimony of Jessica Glace and Ronny Terrero. PGW presented five exhibits, all of which were admitted into the record.

The record closed on December 5, 2018, following the Commission's receipt of the hearing transcript. The record consists of PGW's five exhibits and the 73-page hearing transcript (Tr.). For the reasons discussed below, the Complaint will be dismissed.

## FINDINGS OF FACT

1. The Complainant is Erica Brown.
2. The Respondent is Philadelphia Gas Works.
3. Ms. Brown received service from Philadelphia Gas Works at 145 East Tulpehocken Street, Philadelphia, Pennsylvania (service address). (Tr. 8).
4. Ms. Brown purchased the home at the service address on August 27, 2013. (Tr. 11-12).
5. Ms. Brown moved into the service address in September 2013 and established service with PGW at that time. (Tr. 11).
6. Ms. Brown's mother and daughter moved in with Ms. Brown when she moved into the service address. (Tr. 12).
7. Ms. Brown's husband lived at the service address for approximately a year, moving out in August 2017. (Tr. 12-13).
8. Ms. Brown's cousin stayed at the service address from June 25, 2018 to July 12, 2018. (Tr. 10).
9. Ms. Brown used to hold parties in her basement around the time she first moved into the service address. (Tr. 14-15).
10. The gas meter at the service address is located in the basement. (Tr. 14).
11. Ms. Brown's current household consists of herself, her mother, and her minor daughter. (Tr. 8).

12. Ms. Brown's current gross monthly household income consists of \$1,400 from her employment. (Tr. 68).

13. Ms. Brown's gas service is currently off. (Tr. 8).

14. PGW witness Jessica Glace is a senior customer review officer employed by PGW. Her duties entail investigating Informal and Formal Complaints filed by PGW customers with the Commission. (Tr. 25).

15. PGW witness Ronny Terrero is a FSD cadet employed by PGW. His duties entail turning on and shutting off service, as well as performing theft investigations. (Tr. 45).

16. PGW Exhibit 1 is PGW's copy of the BCS Decision at BCS No. 3634171. This Decision dismisses the Informal Complaint filed by the Complainant, finding her responsible for the meter tampering at her address and for \$5,594.52 in meter bypass charges. (PGW Exhibit 1).

17. PGW Exhibit 3 is a statement of account for the service address of Ms. Brown. The statement of account spans September 24, 2013 through November 8, 2018. (PGW Exhibit 3).

18. PGW Exhibit 4 is the theft reporting documents compiled by PGW following the discovery of a tampered meter at the service address. Page 4 of PGW Exhibit 4 is a picture of Ms. Brown's gas meter in her basement. Page 5 of PGW Exhibit 4 is a picture of the gas meter's ERT head, laying removed from the gas meter on a table in the basement at the service address. Both pictures were taken by Ronny Terrero during a July 16, 2018 investigation at the service address. (PGW Exhibit 4).

19. PGW Exhibit 5 is the usage calculation documents, showing how PGW calculated the meter bypass charges assessed to Ms. Brown, totaling \$5,594.52. (PGW Exhibit 5).

20. PGW Exhibit 6 is the contacts for Ms. Brown's account. This contains the dates that Ms. Brown contacted PGW, and vice versa, along with comments summarizing the correspondence. The contacts for the account span September 24, 2013 through November 8, 2018. (PGW Exhibit 6).

21. When a customer's gas meter registers zero usage, it causes zero usage notices to be sent out to initiate an investigation of the customer's property. (Tr. 32).

22. On July 1, 2018, PGW provided Ms. Brown with a zero usage 10-day meter access notice. (Tr. 62; PGW Exhibit 6, p. 7).

23. On July 10, 2018, PGW provided Ms. Brown with a zero usage 72-hour meter access notice. The 72-hour meter access notice warns the customer that if PGW is not contacted within 72 hours for an investigation to be scheduled, the customer's gas service could be terminated. (Tr. 62; PGW Exhibit 6, p. 7).

24. On July 16, 2018, Mr. Terrero performed a meter usage investigation at the service address. (Tr. 45).

25. Mr. Terrero found the gas service on at the service address. (Tr. 47).

26. During the investigation, Mr. Terrero found the ERT head removed from the gas meter at the service address. (Tr. 47; PGW Exhibit 4, pp. 1, 5).

27. An ERT head is a device that is attached to the front of gas meters. (Tr. 53).

28. To remove the ERT head from the gas meter, four screws must be removed. (Tr. 55).

29. The ERT head records consumer consumption going out to the appliances at the property. PGW gathers meter readings from the ERT head every month through a truck that drives by the property to electronically pull the readings off the ERT. (Tr. 53).

30. If the ERT head is completely removed from the gas meter, it will not measure any gas usage. (Tr. 42).

31. Mr. Terrero inspected the service address during the meter usage investigation and found three gas appliances at the address: a water heater, a gas heater, and a gas stove. (Tr. 47).

32. Mr. Terrero collected the BTUs measurements of the appliances at the service address, which are as follows: gas heater 75,000 BTUs; water heater 60,000 BTUs; and gas stove 65,000 BTUs. (Tr. 47).

33. Due to the discovery of the ERT head being removed from the gas meter, Mr. Terrero shut off the gas at the service address and left a post-termination notice at the address. (Tr. 48-49; PGW Exhibit 4, pp. 1-3).

34. On July 19, 2018, Ms. Brown was assessed meter bypass charges from March 24, 2014 to July 16, 2018 (bypass timeframe) in the amount of \$5,594.52, based upon historical usage at the property. (Tr. 29; PGW Exhibit 3, p. 6; PGW Exhibit 5, p. 1).

35. PGW chose March 24, 2014 as the start date of the meter bypass because that is the first date that the meter indicated that it was being tampered with. (Tr. 42; PGW Exhibit 5, p. 12).

36. The bypass charges in the amount of \$5,594.52 reflect deductions from the amounts billed to Ms. Brown during the meter bypass timeframe. (Tr. 38; PGW Exhibit 5, p. 11).

37. The timeframe that was used to calculate the historical usage at the service address was September 22, 2003 through August 19, 2004, when an individual by the name of Besty A. Glenn was the customer of record at the service address. (Tr. 36; PGW Exhibit 5, pp. 3-4).

38. The period of September 22, 2003 through August 19, 2004 was chosen as the historical usage timeframe because those twelve months represented twelve months of “good” historical usage. (Tr. 37).

39. In summary, PGW calculated the total volume of gas consumed during the 12-month historical timeframe, divided that number by 12 months, and multiplied that number by the total days of the meter bypass converted into total months to come up with the total volume of gas used and to be billed to Ms. Brown. (Tr. 36-38; PGW Exhibit 5, pp. 1-12).

40. The May 22, 2014 bill is the first bill issued to Ms. Brown reflecting zero usage. (PGW Exhibit 3, p. 1). The bill sent in May was for usage prior to May. (Tr. 42).

41. When no gas usage is recorded during a billing period, the customer will be billed only the customer charge. (Tr. 32).

42. During the timeframe of the meter bypass, there are periods whereupon the meter registered usage. (PGW Exhibit 3, pp. 1-4).

43. The variations in usage, whereupon there were periods of no usage recorded and periods of some usage recorded during the bypass timeframe, are a result of an individual removing the ERT head, and replacing it, back and forth frequently during the bypass timeframe. (Tr. 55, 59).

44. As of the date of the hearing, Ms. Brown has an outstanding balance of \$5,824.21 with PGW, which includes the meter bypass charges of \$5,594.52, and the unpaid balance that was left on her account prior to the bypass charges being transferred of \$229.69. (Tr. 43; PGW Exhibit 3 pp. 4-6).

45. PGW is seeking a payment in the amount of \$5,947.44 to restore service at the service address. This amount includes the outstanding balance plus a reconnection fee. (Tr. 30, 63).

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 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.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

This proceeding involves allegations of meter tampering at the service address of Ms. Brown. Ms. Brown's service was terminated and she was assessed bypass charges because of the tampering. Ms. Brown wants her service restored. Ms. Brown has not denied that her gas meter was tampered with. However, she has denied responsibility for the tampering. Therefore, Ms. Brown's argument is that her service was wrongfully terminated and that she is not responsible for the meter bypass charges assessed to her. In the alternative, if the Commission determines that she is responsible for the meter tampering, she wants to be awarded a payment arrangement on the amount PGW is seeking to restore her service. The burden is on Ms. Brown to prove her case by a preponderance of the evidence.

If the Complainant presents 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. Cmwlt. 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. Cmwlt. 2001).

### **Meter Tampering**

First, I will address whether PGW properly determined that Ms. Brown's gas meter was tampered with. PGW gained access to the service address on July 16, 2018 to perform a meter usage investigation. The investigation followed the issuance of zero usage notices to the Complainant, informing the Complainant that PGW needed to investigate the gas meter at the service address due to zero usage being registered. Ms. Brown acknowledged receipt of these notices. (Tr. 9, 10). The investigation was performed by PGW witness Terrero. During the investigation, Mr. Terrero discovered the ERT head removed from the gas meter located in the basement of the service address. Mr. Terrero classified the removal of the ERT head from the gas meter as meter tampering. The Commission's regulations define "meter tampering" as follows:

#### **§ 56.2. Definitions.**

*Unauthorized use of utility service*--Unreasonable interference or diversion of service, including meter **tampering** (any act which affects the proper registration of service through a meter), by-passing unmetered service that flows through a device connected between a service line and customer-owned facilities and unauthorized service restoral.

52 Pa.Code § 56.2.

An ERT head is a device that records consumer consumption. PGW relies on the ERT head to gather meter readings to issue bills to its customers. The removal of the ERT head, preventing consumer consumption from being registered, is meter tampering. PGW determined that the gas meter at the service address had been being tampered with since March 24, 2014. Starting after this date, as evidenced by Ms. Brown's statement of account, there are abnormally low variations in gas usage at the service address. These variations cannot be explained by anything other than the fact that Ms. Brown's meter was being tampered with during the bypass timeframe.

It is particularly evident that Ms. Brown's gas meter was tampered with during the bypass period by reviewing the statement of Ms. Brown's account for the winter months. The statement of Ms. Brown's account evidences that abnormally low to even zero usage was recorded during the winter months of the bypass timeframe, compared to the winter of 2013-2014. Ms. Brown testified to being uncertain as to whether she used electricity or gas to heat her home prior to her gas service being terminated; however, Mr. Terrero discovered that Ms. Brown had a gas heater during his investigation, and I am persuaded by the testimony of PGW's witnesses that Ms. Brown would have used gas heat to heat her home when her service was active. (Tr. 38, 39, 48). Ms. Brown has three gas appliances in her household, and Ms. Brown did not testify to limited use of her gas appliances during the bypass timeframe, or that she had stopped using the appliances. Only a faulty meter or meter tampering can explain the variations in usage over the approximately four-year bypass timeframe. If these reduced readings were the cause of a faulty meter, there would be no evidence of tampering like that found by Mr. Terrero. Therefore, I find that PGW made no violation of the Commission's regulations in determining that Ms. Brown's meter was tampered with starting on March 24, 2014 until the gas service was terminated.

### **Termination of Service**

Second, I will address whether PGW properly terminated service at Ms. Brown's service address. Ms. Brown did not directly challenge PGW's termination procedures as it relates to her service, however, PGW must have complied with the Commission's regulations in terminating Ms. Brown's service.

This discovery of meter tampering at Ms. Brown's address led to Mr. Terrero shutting off the gas at the service address. Mr. Terrero left a post-termination notice at the service address after he terminated service. The Commission's regulations address when a utility is permitted to terminate service at a service address:

**§ 56.81. Authorized termination of service.**

A public utility may notify a customer and terminate service provided to a customer after notice as provided in §§ 56.91--56.100 (relating to notice procedures prior to termination) for any of the following actions by the customer:

- (1) Nonpayment of an undisputed delinquent account.
- (2) Failure to complete payment of a deposit, provide a guarantee of payment or establish credit.
- (3) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading
- (4) Failure to comply with the material terms of a payment agreement.

52 Pa.Code § 56.81.

The above referenced regulations at 52 Pa.Code §§ 56.91--56.100 provide generally that a utility company must give a customer notice of proposed termination under 52 Pa.Code § 56.81 prior to service being terminated. Thus, if a customer performs any of the four actions under 52 Pa.Code § 56.81 a utility may terminate the customer's service after providing notice of the proposed termination. However, there are actions by a customer that permit a utility to immediately terminate service without providing notice beforehand.

**§ 56.98. Immediate termination for unauthorized use, fraud, tampering or tariff violations.**

(a) A public utility may immediately terminate service for any of the following actions by the customer:

- (1) Unauthorized use of the service delivered on or about the affected dwelling.

(2) Fraud or material misrepresentation of the customer's identity for the purpose of obtaining service.

(3) Tampering with meters or other public utility equipment.

(4) Violating tariff provisions on file with the Commission which endanger the safety of a person or the integrity of the public utility's delivery system.

(b) Upon termination, the public utility shall make a good faith attempt to provide a post-termination notice to the customer or a responsible adult person or occupant at the affected premises. If providing a post-termination notice to the customer or responsible person at the affected premises is not possible, the public utility shall conspicuously post the notice at the affected premises. In the case of a single meter, multiunit dwelling, the public utility shall conspicuously post the notice at the dwelling, including in common areas when possible.

52 Pa.Code § 56.98.

In this present case, notice was not given to Ms. Brown prior to her service being terminated. Ms. Brown's service was immediately terminated without any prior notice upon the discovery of meter tampering at her address. Ms. Brown's service was not terminated due to any of the four actions under 52 Pa.Code § 56.81, but her service was terminated under 52 Pa.Code § 56.98(a)(3). PGW, through Mr. Terrero, was permitted under 52 Pa.Code § 56.98(a)(3) to immediately terminate Ms. Brown's gas service after the discovery of meter tampering at her address. Furthermore, Mr. Terrero properly left a post-termination notice at Ms. Brown's address as required by 52 Pa. Code § 56.98(b).

I find that PGW has committed no violation of the Commission's regulations concerning the termination procedures undertaken at Ms. Brown's address.

### **Meter Tampering Responsibility**

Third, I will address whether PGW erred in billing Ms. Brown meter bypass charges as the party responsible for the meter tampering at her address.

Ms. Brown testified that she was not the individual who removed the ERT head from her gas meter. Ms. Brown does not know who removed the ERT head from the meter. Ms.

Brown, her 67-year old mother, and her minor daughter have lived at the service address continuously since September 2013. Ms. Brown testified that she used to hold parties in her basement around the time she first moved into her service address. Ms. Brown's cousin stayed at the service address from June 25, 2018 to July 12, 2018 while Ms. Brown was on a vacation. Ms. Brown also stated that her husband lived at the service address for about a year, moving out in August 2017. Given that PGW provided substantial evidence that the meter tampering began on March 24, 2014, and given Ms. Brown's testimony, the individual who initially removed the ERT head from the meter theoretically could have been Ms. Brown, her mother, her daughter, or an individual whom she invited over to her home for one of the parties that she held. However, the ERT head did not remain completely removed over the bypass timeframe. I am persuaded by the testimony provided by PGW's witnesses that the ERT head was removed and replaced several times over the bypass timeframe. This is because there are periods within the bypass timeframe where at least some gas usage was registered through the ERT head. For the ERT head to be removed and replaced frequently during the bypass timeframe, the individual performing the tampering must have had consistent access to the basement during the bypass timeframe. The door leading to the basement is in the kitchen of the service address. (Tr. 15).

It may be true that Ms. Brown was not the individual who tampered with the meter. However, a finding that Ms. Brown was the individual that tampered with the meter, or had actual knowledge of the tampering, is not necessary to find Ms. Brown responsible for the tampering and thus the bypass charges.

In Kull v. Philadelphia Gas Works, Docket No. C-2013-2379510 (Final Order entered May 30, 2014) (Kull), the Complainant was not found to have caused the meter tampering at her service address or to even have had actual knowledge of the tampering. Nonetheless, she was found responsible for the service that was unbilled as a result of meter tampering because she was the customer of record during the timeframe at issue. The same holding was reached in Lutz v. Philadelphia Gas Works, Docket No. C-2017-2594438 (Final Order entered December 21, 2017), where the Commission found that the Complainant was responsible for the service that was unbilled as a result of meter tampering as the responsible party for the account, regardless of whether or not he tampered with the meter.

Likewise, because Ms. Brown was the customer of record during the bypass timeframe (March 24, 2014 to July 16, 2018) at issue, I will find her responsible for the meter tampering at her service address as the responsible party for the service account. This is not a finding that Ms. Brown caused the meter tampering or had actual knowledge of the tampering. The caselaw cited above clearly establishes that a customer of record should have “constructive” knowledge of any tampering occurring with the meter for their account, and that constructive knowledge is enough to hold them financially responsible for any meter tampering. Not only has Ms. Brown been the customer of record since September 2013, but she has also been the property owner of the home at the service address since August 2013 and has continuously resided at the property since its purchase. A property owner having dominion and control over a service address is responsible to have known, or should have known, of tampering and theft of service occurring at the property. Simmons v. UGI Utilities, Inc., Docket No. C-2017-2605783 (Final Order entered July 12, 2018).

I find that PGW has committed no violation of the Commission’s regulations in billing Ms. Brown meter bypass charges as the party responsible for the meter tampering at her address.

### **Restoration of Service**

Fourth, as it has been determined that Ms. Brown is responsible for the meter tampering at her service address, it must now be determined if the amount of \$5,947.44 that PGW is seeking from the Complainant for service to be restored has been properly calculated. The restoration amount of \$5,947.44 consists of Ms. Brown’s outstanding balance (the bypass charges plus the unpaid balance left over on Ms. Brown’s account before the bypass charges were transferred to the account) and a reconnection fee. There was no evidence presented at the hearing by the Complainant to show that PGW miscalculated the restoration amount. Through my review of the record there is no indication that PGW miscalculated the restoration amount.

PGW has held Ms. Brown responsible for the meter tampering at her address and has assessed her unbilled usage in the form of meter bypass charges in the amount of \$5,594.52. The timeframe of the meter bypass is from March 24, 2014 (the date that Ms. Brown’s gas meter

was first tampered with) to July 16, 2018 (the date Mr. Terrero terminated Ms. Brown's gas service). I find no error in the use of the period from March 24, 2014 to July 16, 2018 as the meter bypass timeframe as PGW presented substantial evidence to show that the gas meter at the service address was first tampered with on March 24, 2014.

As stated, the meter bypass charges were calculated using the historical usage of the service address from the timeframe of September 22, 2003 through August 19, 2004 when a customer by the name of Besty A. Glenn was the customer of record at the service address. Typically, when calculating meter bypass charges to be assessed to a customer, the utility company would use the historical usage of that same customer at the address. However, the meter bypass began on March 24, 2014, approximately six months after Ms. Brown established service with PGW. Thus, PGW did not have twelve months of good historical usage for Ms. Brown. The historical usage timeframe that was chosen was chosen because those twelve months represented twelve months of "good" historical usage. Finding of Fact #39 summarizes PGW's calculations in coming to the unbilled usage charges in the amount of \$5,594.52.

Although the meter bypass began on March 24, 2014, the bypass was not a "full" meter bypass in that the Statement of Account reflects that there were periods during the meter bypass timeframe that some usage was recorded by PGW. I accept PGW's explanation that the variations in usage are a result of an individual removing and replacing the ERT frequently during the bypass timeframe. The amount billed of \$5,594.52 reflects these variations, as the amount contains deductions from the amounts that were billed during the bypass timeframe. When no usage was recorded, Ms. Brown was assessed the customer charge, and when usage was recorded, she was assessed a bill for that usage.

Obviously, the unbilled amount represents an amount that was estimated by PGW through its calculations, not an actual amount. PGW is permitted to make such estimates to calculate service due because of meter tampering.

8.3. TAMPERING. In the event of the Company's meters or other property being tampered or interfered with, the Customer being supplied through such equipment shall pay the amount which the Company may estimate is due for service used even if such usage is not registered on the Company's meter, and for any repairs

or replacements required, as well as for costs of inspections, investigations, damages and protective equipment and installations prior to reconnection.

PGW Gas Service Tariff, First Revised Page No. 44.

Where a Complaint involves an existing, Commission-approved tariff, the burden falls upon the customer to prove that the charge or rule is no longer reasonable. Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 437 A.2d 1067 (Pa.Cmwlth. 1981). A Commission-approved tariff is prima facie reasonable, has the full force of law and is binding on the utility and the customer. *Id.*; 66 Pa.C.S. § 316; and Kossman v. Pa. Pub. Util. Comm'n, 694 A.2d 1147 (Pa.Cmwlth. 1997).

The amount of \$5,594.52 billed to Ms. Brown represents a properly estimated figure. PGW is seeking \$5,947.44, including the \$5,594.52 in bypass charges, to restore Ms. Brown's service. The Commission's regulations address the payment and timing of restoration of service.

**§ 56.191. Payment and timing.**

(a) *Fee.* A public utility may require a reconnection fee based upon the public utility's cost as approved by the Commission prior to reconnection of service following lawful termination of the service. The amount of this fee must be specified in the public utility's tariff on file with the Commission.

\*\*\*

(d) *Payment of outstanding balance at premises as a condition to restore service.* 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.

Thus, under the regulation above, PGW can properly require the Complainant to pay her outstanding balance plus a reconnection fee prior to service being restored. I find that PGW has not committed a violation of the Commission's regulations in calculating the unbilled charges due to the meter bypass at the service address in the amount of \$5,594.52, nor has PGW

committed a violation in requesting Ms. Brown to pay \$5,947.44 to restore her service. Ms. Brown must pay this amount before her service is restored.

### **Payment arrangement**

Last, having concluded that Ms. Brown must pay \$5,947.44 to restore her service, I will now determine if Ms. Brown is eligible for a payment arrangement on this amount.

When the meter bypass charges were placed on Ms. Brown's account, Ms. Brown contacted PGW and asked for a payment arrangement. (Tr. 14). PGW declined to provide Ms. Brown with a payment arrangement. Typically, when a public utility renders a make-up bill for previously unbilled service, it must make reasonable attempts to amortize the bill through issuing a payment arrangement.

#### **§ 56.14. Previously unbilled public utility service.**

When a public utility renders a make-up bill for previously unbilled public utility service which accrued within the past 4 years resulting from public utility billing error, meter failure, leakage that could not reasonably have been detected or loss of service, or four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill for the billing period during which the make-up bill is issued by at least 50% or at least \$50, whichever is greater:

(1) The public utility shall explain the bill to the customer and make a reasonable attempt to amortize the bill.

(2) The period of the amortization may, at the option of the customer, extend at least as long as:

(i) The period during which the excess amount accrued.

(ii) Necessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%.

52 Pa.Code § 56.14.

In this present case, the previously unbilled public utility service accrued because of meter tampering and not as a result of public utility billing error, meter failure, leakage that

could not reasonably have been detected, loss of service, or four or more consecutive estimated bills. Therefore, PGW is not required to enter into a payment arrangement with Ms. Brown for payment of this previously unbilled public utility service. See Kull; Santiago v. UGI Utilities, Inc., Docket No. C-2016-2526133 (Final Order entered September 19, 2016). PGW has also declined to explore whether Ms. Brown is eligible for its Customer Responsibility Program. (Tr. 64-65).

Regarding a Commission-issued payment arrangement, Ms. Brown has never been issued a payment arrangement from the Commission. The gross monthly household income of Ms. Brown is \$1,400 for a household of three.

By law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth. 1982). Public utilities are entitled to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303; Neal v. Philadelphia Gas Works, Docket No. Z-00871874 (Final Order entered January 4, 2002); Angie's Bar v. Duquesne Light Co., 72 Pa. PUC 213 (1990). All customers are obligated to pay for utility service. Otherwise, unpaid bills are included in the utility's uncollectible expenses, which all of its remaining customers must pay. Bolt v. Duquesne Light Co., Docket No. Z-8721758 (Opinion and Order entered April 8, 1988). A payment arrangement, which prevents service termination as long as the Complainant complies with it, is a privilege, not a right. Mandell v. Duquesne Light Co., Docket No. C-20030234 (Opinion and Order entered March 17, 2004).

Requests for payment arrangements are governed by The Responsible Utility Customer Protection Act, 66 Pa.C.S. §§ 1401-1418. This law provides strict guidelines that the Commission must follow when determining whether a payment arrangement can be issued and the length of the payment arrangement.

## § 1405. Payment arrangements

**(a) General rule.**--The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

**(b) Length of payment arrangements.**--The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment arrangement that is investigated by the commission and is entered into by a public utility and a customer shall not extend beyond:

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Three years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

66 Pa.C.S. §§ 1405(a)-(b).

A gross monthly household income of \$1,400 for a household of three is less than 100% of the Federal poverty level.<sup>1</sup> Therefore, Ms. Brown would be a level 1 customer who would be eligible for a five year payment arrangement to resolve her unpaid balance.

However, in Fassett v. Philadelphia Gas Works, F-2014-2408541 (Opinion and Order entered April 27, 2015) (Fassett), the Commission stated: “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.” Fassett at 8. As for the Commission’s rationale, it stated: “To do otherwise sends the wrong message to all other law-abiding ratepayers that those who willfully misuse utility service can receive the benefit of a delayed repayment

---

<sup>1</sup> See Federal Register, Vol. 83, No. 12, pp. 2642-2644 (January 18, 2018). *Also available at* <http://aspe.hhs.gov/poverty> (providing that 100% of the Federal poverty level for a household of three is \$1,732.)

period at no interest to repay a debt arising from the misuse of service.” Fassett at 10.

Therefore, although Ms. Brown would otherwise be eligible for a Commission-issued payment arrangement, she will not be granted one because of her involvement in theft of utility service.

Ms. Brown must pay the entire restoration amount without the help of a payment arrangement before her service is restored.

### **Meter Usage Investigation**

I find it necessary to express concern over the length of time it took PGW to investigate the meter at Ms. Brown’s service address. Ms. Glace indicated that PGW first received an indication that Ms. Brown’s gas meter was being tampered with on March 24, 2014, and that it was the meter registering zero usage that caused zero usage notices to go out to initiate an investigation of the customer’s property. However, the investigation of Ms. Brown’s property did not take place until July 16, 2018. As PGW gathers meter readings every month, it was on notice that Ms. Brown’s meter was being tampered with every month for over four years. Ms. Glace testified that this delay in investigating Ms. Brown’s meter could have been a result of a lack of manpower or the fact that some people do not use gas during certain months. (Tr. 41, 60). Given the delay, a consideration of whether PGW failed to provide adequate and reasonable service in violation of 66 Pa.C.S. § 1501<sup>2</sup> is necessary.

In DiAntonio v. Philadelphia Gas Works, Docket No. F-2017-2634058 (Final Order entered July 13, 2018), the Administrative Law Judge (ALJ) determined that PGW should not be assessed a civil penalty for its delay in investigating meter tampering (in DiAntonio, there was 10 years of evidence of meter tampering) because the Complainant benefited from the tampering by not having to pay the full amount of gas used, and because PGW incurred a *de facto* penalty by not collecting the full amount used. The ALJ also recommended that PGW reexamine its business practices as they relate to the investigation of meters showing tamper counts. I will come to the same conclusion here and offer the same recommendation.

---

<sup>2</sup> Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501.

## Conclusion

Based on the foregoing, I conclude that the Complainant did not meet her burden of proving that her service was wrongfully terminated for meter tampering or that she was wrongfully billed for unbilled usage as a result of meter tampering. The Complainant also did not meet her burden of proving that she is eligible for a payment arrangement. The Complainant must pay the restoration amount in full to restore her service.

### 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. The customer of record is responsible for service unbilled as a result of meter tampering as the responsible party for the account, regardless of whether or not he/she tampered with the meter. Kull v. Philadelphia Gas Works, Docket No. C-2013-2379510 (Final Order entered May 30, 2014); Lutz v. Philadelphia Gas Works, Docket No. C-2017-2594438 (Final Order entered December 21, 2017).
6. A property owner having dominion and control over a service address is responsible to have known, or should have known, of tampering and theft of service occurring at

the property. Simmons v. UGI Utilities, Inc., Docket No. C-2017-2605783 (Final Order entered July 12, 2018).

7. 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).

8. The commission is authorized to establish payment arrangements between a public utility and a customer. 66 Pa.C.S. § 1405(a).

9. Awarding a payment arrangement is not appropriate when the person requesting the arrangement was involved in a theft of utility service while residing at the service location. To do otherwise sends the wrong message to all other law-abiding ratepayers that those who willfully misuse utility service can receive the benefit of a delayed repayment period at no interest to repay a debt arising from the misuse of service. Fassett v. Philadelphia Gas Works, F-2014-2408541 (Opinion and Order entered April 27, 2015).

10. The Complainant failed to meet her burden of proving that her service was wrongfully terminated.

11. The Complainant failed to meet her burden of proving that the Respondent erred in billing her for unbilled service at the service address from March 24, 2014 through July 16, 2018 in the amount of \$5,594.52.

12. The Complainant failed to meet her burden of proving that she is eligible for a payment arrangement.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Erica Brown against Philadelphia Gas Works at Docket No. F-2018-3004509 is dismissed; and
2. That the docket at Docket No. F-2018-3004509 is marked closed.

Date: December 18, 2018

\_\_\_\_\_  
/s/  
Alphonso Arnold III  
Special Agent