

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elvin Ocasio	:	
	:	
v.	:	F-2018-3003709
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision denies Elvin Ocasio’s formal Complaint because he failed to sustain his burden of proving that Philadelphia Gas Works wrongfully determined that there was theft of service at his property during the period September 1, 2003 – May 16, 2018.

HISTORY OF THE PROCEEDING

On July 20, 2018, Elvin Ocasio (Complainant or Mr. Ocasio) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the Respondent wrongly determined that there was theft of service at his property. As relief, Mr. Ocasio requested that the Commission order PGW to rescind the gas bill issued to him for unmetered gas usage at that property.

This Complaint is a timely appeal of a decision issued by the Commission’s Bureau of Consumer Services at BCS Case No. 3618392, which dismissed his informal complaint.

On August 21, 2018, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated August 23, 2018, notified the parties that the hearing for this case was scheduled on Wednesday, October 17, 2018, at 10:00 a.m.

A Prehearing Order was issued on September 12, 2018, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The initial hearing convened as scheduled on October 17, 2018. Elvin Ocasio appeared *pro se* and testified in support of the Complaint. Mr. Ocasio sponsored four exhibits, which were admitted into the record. Graciela Christlieb, Esq., represented the Respondent, and presented the testimony of Kimberly Cowan, Nicolas Simeo, Joseph Leva and Jessica Glace. The Respondent sponsored seven exhibits, which were admitted into the record.

The record in this matter closed upon receipt of my copy of the transcript on November 26, 2018.

FINDINGS OF FACT

1. The Complainant is Elvin Ocasio who resides at 5914 Palmetto Street, Philadelphia, PA 19120 (Service Address). Tr. 6.
2. Respondent is Philadelphia Gas Works.
3. Mr. Ocasio purchased the Service Address in 1998 and has lived there ever since. Tr. 12-13.

4. Although Mr. Ocasio owns the Service Address, gas service at the property was in the name of his former partner and mother of his children. Tr. 12.
5. On May 21, 2003, gas service at the Service Address was terminated for non-payment. Tr. 17, 45.
6. At the time of the termination of service in May of 2003, the index in Mr. Ocasio's gas meter read 7233. Tr. 65-66, PGW Exhibits 1 and 2.
7. On September 19, 2003, the gas meter serving the Service Address registered a tilt count. PGW Exhibit 1, at 6.
8. On February 20, 2004, the gas meter serving the Service Address registered another tilt count. PGW Exhibit 1, at 6.
9. A tilt count registers every time the gas meter or the gas meter's recording device, ERT, is moved. Tr. 54-55.
10. Mr. Ocasio has been the sole resident at the Service Address since 2003, with his son visiting on and off. Tr. 14, 17-18.
11. After the 2003 termination, no one applied to receive gas service at that property. Tr. 46.
12. When gas service to a specific address is shut off, either at the meter valve or at the curb valve, and not turned back on for more than two years, the address is sent to PGW's "active service/inactive account" (ASIA) program for the company to abandon gas service at that address by shutting off gas service at the main line. Tr. 85-86, 90.

13. While PGW has always had an ASIA program in place, in March of 2017, the company began using outside contractors to handle the backlog of services in ASIA status. Tr. 86.

14. Once the ASIA service abandonment process is completed, there is no more possibility of gas theft occurring at a particular address.

15. If an applicant requests gas service within one year from the time service was abandoned through the ASIA program, PGW's Revenue Protection Unit will conduct an investigation at that property. Tr. 87.

16. Since March 2017, PGW has abandoned services to 3,000 addresses in its service territory and has seen an increase in the number of theft investigations. Tr. 87.

17. On May 16, 2018, PGW sent a contractor to the Service Address for the purpose of removing PGW's service line from the main to the meter because for many years the property had "an active service [line] with an inactive account." Tr. 46-47, PGW Exhibit 1.

18. On May 16, 2018, Mr. Ocasio contacted PGW to find out about the digging in front of his property. Tr. 48, PGW Exhibit 5.

19. Mr. Ocasio's call prompted PGW's representative to forward his information to the company's Revenue Protection Unit where a dispatch order was created to send a technician to check the meter of the Service Address on an unbilled usage tip. Tr. 49-50, PGW Exhibit 5.

20. Mr. Ocasio was informed that a PGW technician was on his way and would be at the Service Address shortly. Tr. 51, PGW Exhibit 5.

21. When the PGW technician got to the Service Address, Mr. Ocasio had left for work and the technician was unable to gain access to the meter. Tr. 8.

22. On May 16, 2018, Mr. Ocasio contacted PGW a second time, inquiring about the restoration of service at the Service Address. Tr. 52, PGW Exhibit 6.

23. Mr. Ocasio was informed that a PGW technician needed to check the meter before service could be restored and an appointment was set up for the following week. Tr. 52-53, PGW Exhibit 6.

24. Kimberly Cowan is the PGW field service technician who visited the Service Address on May 21, 2018. Tr. 26.

25. During the May 21, 2018 field investigation, Ms. Cowan noticed that gas service at the Service Address was shut off with a bike lock, but that the lock itself was shiny. Tr. 27.

26. Ms. Cowan noticed that the meter's ERT head was missing the two red caps that the company places on its meters as anti-theft devices. Tr. 27-29, PGW Exhibit 2.

27. The absence of the safety caps indicates to PGW employees that the ERT has been removed and that the meter has been bypassed, allowing gas to flow unrecorded through the customer's pipes. Tr. 39, 42-43.

28. While at the Service Address, Ms. Cowan traced the fuel line from the meter and found no pipes going towards the kitchen. Tr. 29.

29. The Service Address is equipped with a gas house heater, a gas water heater and a gas clothes drier located in the basement. Tr. 32, PGW Exhibit 2.

30. Using a handheld gas detection device called a SENSIT, Ms. Cowan got a five percent natural reading on the fuel line, which indicated that gas had recently passed through the outlet pipes of the meter. Tr. 33, 38, 58-59, PGW Exhibit 2.

31. Five percent natural reading is not indicative of a minimal amount of gas as SENSIT must read past the lower explosive limits (0-100 LEL) before reaching the natural readings. Tr. 58.

32. While residual gas may remain on the fuel line for a matter of days, any amount of residual gas left inside the pipes of the Service Address since 2003 would have dispersed by 2018. Tr. 63-64.

33. Ms. Cowan concluded the field investigation by removing the gas meter from the Service Address and leaving a note in Mr. Ocasio's door concerning her findings of theft of service at the property. Tr. 8, 18.

34. Following Ms. Cowan's filed investigation, PGW assessed \$20,012.59 in theft of service charges against Mr. Ocasio. Tr. 94-95, 98, PGW Exhibit 3.

35. The \$20,012.59 charges covered the period from September 1, 2003 to May 16, 2018 and were based on historical usage at the Service Address. *Id.*

DISCUSSION

In his formal Complaint, Mr. Ocasio alleged that PGW is improperly holding him responsible for unauthorized usage of gas at a property that he leased to tenants for several years. As relief, Mr. Ocasio requested that the Commission order PGW to rescind the gas bill issued to him for unmetered gas usage at that property.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the

complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S.A. § 701. If the complainant establishes a *prima facie* case, then the burden of going forward with the evidence, but not the ultimate burden of proof, shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal. If the utility presents co-equal evidence, the burden of going forward shifts back to the complainant, to rebut the utility's case by a preponderance of the evidence. *Poorbaugh v. West Penn Power Company*, 1994 Pa. PUC LEXIS 95, *vacated* on other grounds, 666 A.2d 744 (Pa.Cmwlth. 1995) (*Poorbaugh*). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990) *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). 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).

In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

At the evidentiary hearing, Mr. Ocasio made a *prima facia* case that PGW improperly assessed charges against him in connection with their finding of a tampered meter at the Service Address. He testified that around 10:00 a.m. on May 16, 2018, he saw a contractor digging up a hole in front of his property. Tr. 7, 13. He spoke with the contractor's technicians who informed him that they were sent by PGW to shut off gas at the main line because the gas pipes were old, and the property had not received any gas service for a long period of time. Tr. 7, 13. A few minutes later, Mr. Ocasio contacted PGW to confirm the contractor's story and to let PGW know that he was planning on getting gas service to the Service Address in the future. Tr. 7, 13-14. PGW informed Mr. Ocasio that a PGW technician would be visiting his home

shortly to check the safety of the service line. Tr. 7. As Mr. Ocasio was due to his place of work that morning, he was unable to wait long for the technician to arrive. Tr. 8.

Mr. Ocasio explained that a few days later another PGW technician visited the Service Address. Tr. 8. During the visit, the PGW technician checked the meter in the basement of the Service Address and left a note on the door regarding theft of service at the property. Tr. 8, 18. Following her visit, Mr. Ocasio received a bill from PGW for \$20,000 in connection with theft of service. Tr. 8.

Mr. Ocasio maintained that PGW did not properly investigate the charges of theft of service against him and that he is improperly accused of unauthorized use of gas in his property. Tr. 8, 10. He stated that, although he owns the Service Address, gas service at the property had always been in the name of his former partner and mother of his children. Tr. 12. He also added that gas service at the Service Address had been off since 2003. Tr. 17. He explained that he has been the sole resident at the Service Address since 2003, with his son visiting on and off. Tr. 14, 17-18. He testified that he was a long-haul truck driver for many years, spending most of his time away from home. Tr. 10, 15-16. Mr. Ocasio testified that when he was home, he used an electric space heater for heat. Tr. 10, 15-16. However, because he was forced into a more regular schedule in the recent years and his now adult son has moved in with him, he is considering turning gas service back on at the Service Address. Tr. 14, 16-17.

Mr. Ocasio testified that there is a gas clothes drier in the basement of the Service Address along with an electric clothes drier in the kitchen. Tr. 19. He explained that in addition to the gas house heater, which service he has replaced with the use of an electric space heater, the property also has a gas water heater, which he has modified to work with electricity by watching an instructional video on YouTube. Tr. 20, 23-24.

In response to Mr. Ocasio's testimony, PGW presented the testimony of Kimberly Cowan, Nicolas Simeo, Joseph Leva and Jessica Glace, who successfully rebutted Mr. Ocasio's testimony. Kimberly Cowan is a field service technician for the PGW. Tr. 25. She visited the Service Address on May 21, 2018. Tr. 26. Upon arrival, she noticed that gas service was shut

off with a bike lock, but that the lock itself was shiny. Tr. 27. She found the state of the lock odd since service at the Service Address was shut off 15 years earlier. Tr. 27, 40. She also noticed that the meter's ERT head was missing the two red caps that the company places on its meters as anti-theft devices. Tr. 27-29, PGW Exhibit 2. During cross-examination, Ms. Cowan explained that the absence of the safety caps indicates to PGW employees that the ERT has been removed and, because the ERT is the device that records and reports gas readings to the company, that the meter has been bypassed allowing gas to flow unrecorded through the Complainant's pipes. Tr. 39, 42-43.

While at the Service Address, Ms. Cowan traced the fuel line from the meter and found no pipes going towards the kitchen, which was an indication that no gas appliances were located there. Tr. 29. She testified that she did not see any modifications to the water heater, nor did Mr. Ocasio point them out for her. Tr. 30. Using a handheld gas detection device called a SENSIT, Ms. Cowan got a reading of "five natural gas" at the meter. Ms. Cowan explained that a reading of "five natural gas" from SENSIT indicates that gas had recently passed through the outlet pipes of that meter. Tr. 33, 38, PGW Exhibit 2.

Nicholas Simeo, who is a supervisor in PGW's Revenue Protection Unit testified that gas service at the Service Address was terminated for non-payment on May 21, 2003. Tr. 45. After the 2003 termination, no one applied to receive gas service at that property. Tr. 46. Mr. Simeo confirmed the testimony of Mr. Ocasio when he explained that on May 16, 2018, PGW sent a contractor to the Service Address for the purpose of removing PGW's service line from the main to the meter because for many years the property had "an active service [line] with an inactive account." Tr. 46-47, PGW Exhibit 1.

Mr. Simeo confirmed that on the same date, Mr. Ocasio had contacted PGW to find out about the digging in front of his property. Tr. 48, PGW Exhibit 5. According to PGW's records, Mr. Ocasio believed that the digging was related to failure to pay. *Id.* The information was forwarded to PGW's Revenue Protection Unit where a dispatch order was created to send a technician to check the meter of the Service Address on an unbilled usage tip. Tr. 49-50, PGW Exhibit 5. Mr. Ocasio was informed that the technician was on his way and would be at the

Service Address shortly. Tr. 51, PGW Exhibit 5. However, when the technician got to the Service Address, Mr. Ocasio was not there, and the technician was unable to gain access to the meter. *Id.*

Mr. Simeo testified that Mr. Ocasio contacted PGW again inquiring about the restoration of service at the Service Address. Tr. 52, PGW Exhibit 6. He was informed that a PGW technician needed to check the meter before service could be restored. *Id.* Mr. Ocasio requested a Saturday appointment and was given an appointment for the following Monday. Tr. 52-53, PGW Exhibit 6.

Next, Mr. Simeo testified that between 2003 and 2004, the meter serving the Service Address had registered several tilt and magnetic tamper counts. Tr. 54, PGW Exhibit 1. He explained that a tilt count registers every time a meter or the meter ERT is moved. Tr. 54-55. Several tilt counts registered in 2003-2004 in Mr. Ocasio's meter indicate that the meter or its ERT head were tampered with during this time. In addition, Mr. Simeo testified that the bike lock serves as a theft deterrent, but that there are YouTube videos with instructions on how to overcome it. Tr. 57.

Lastly, Mr. Simeo turned to the "five percent natural gas" reading that Ms. Cowan detected on the SENSIT device. Tr. 58. He explained that SENSIT determines the upper and lower explosive limits (LEL) of gas and is regularly used to detect leaks by PGW. Tr. 58. He testified that a five percent natural reading on a fuel line indicates that there was gas being used in the property recently. Tr. 58-59. He added that five percent natural reading is not indicative of a minimal amount of gas. In fact, SENSIT must read past the lower explosive limits (0-100 LEL) before reaching the natural readings. Tr. 58.

Mr. Simeo pointed out that residual gas could remain on the fuel line for a matter of days, but that any amount of residual gas left inside the pipes since 2003 would have dispersed by 2018. Tr. 63-64. To Mr. Ocasio's argument that the bike lock could have failed in the years since it was installed, Mr. Simeo responded that Ms. Cowan would have noticed, recorded and repaired a broken lock when she visited the property, but there is no record of such an

observation on her part. More importantly, a properly functioning meter would have picked out the flow of gas from a broken lock to the Complainant's fuel line. Tr. 65. Yet, the index in Mr. Ocasio's meter read 7233 at the time of the termination of service in May of 2003, and it still read 7233 in May 16, 2018 when Ms. Cowan removed it from the Service Address. Tr. 65-66, PGW Exhibits 1 and 2.

Joseph Leva testified as superintendent of operations and maintenance for the Respondent. He provided details about PGW's "active service/inactive account" (ASIA) program. Tr. 85. He explained that when gas service to a specific address is shut off, either at the meter valve or at the curb valve and not turned back on for more than two years, the address is sent to ASIA program for the company to abandon gas service at that address by shutting off gas service at the main. Tr. 85-86, 90. Mr. Leva explained that the company always had an ASIA program in place, but beginning in March of 2017, PGW began using outside contractors to handle the backlog of services in ASIA status. Tr. 86. He added that, once the ASIA service abandonment is completed, there is no more possibility of gas theft occurring at a particular address.

Mr. Leva added that, if an applicant requests gas service within one year from the time service was abandoned through the ASIA program, PGW's Revenue Protection Unit will conduct an investigation at that property. Tr. 87. He pointed out that in Mr. Ocasio's case, the Complainant contacted the company to inquire about restoring gas service at his property the same day PGW's ASIA contractors dug up the line. Tr. 87. According to Mr. Leva, since March 2017, PGW has abandoned services to 3,000 addresses in its service territory and has seen an increase in the number of theft investigations. Tr. 87.

PGW's fourth witness, Jessica Glace, testified as a customer review unit officer for the Respondent. Her testimony covered PGW's calculations for the charges assessed to Mr. Ocasio in relation to the meter tampering detected at the Service Address. Tr. 94, PGW Exhibit 3. She explained that the charges covered the period from September 1, 2003 (when the first tilt count was reported following the termination of service at the Service Address) through May 16,

2018. Tr. 94-95, 98, PGW Exhibit 3. The charges were based on the historical usage at the property during the period May 2001 to April 2002 and amounted to \$20,012.59. *Id.*

Like Mr. Simeo before her, Ms. Glace addressed Mr. Ocasio's argument that his inquiry to PGW about the restoration of gas service at the Service Address was out of concern for the viability of service in the undetermined future, in view of the company's decision to abandon service at his address. Ms. Glace pointed out that, in the informal complaint Mr. Ocasio filed with the BCS on May 25, 2018, he made statements similar to those he made to the Respondent on May 16, 2018. In particular, Mr. Ocasio specifically asked that the charges assessed against him be verified and that gas service be turned on in his name at the Service Address. Tr. 97-98, PGW Exhibit 4. This suggests that Mr. Ocasio's intention to get gas service turned on at his property was more immediate than described in his testimony.

Mr. Ocasio failed to rebut the evidence presented by the Respondent's witnesses. Instead, he insisted that he did not tamper with the gas meter at the Service Address and that he had replaced, doubled or modified all the gas appliances in his property with electrical ones. Apart from offering conjecture with regard to PGW's receiving a five percent natural reading on his fuel line 15 years after the termination of service in his property, Mr. Ocasio was unable to offer any other evidence to substantiate his claim that PGW had wrongfully determined that there was theft of service at his property during the period September 1, 2003– May 16, 2018. However, mere bald assertion, personal opinions or perceptions do not constitute evidence to bolster a claim. *Pa. Bureau of Corrections v. City of Pittsburgh*, 516 Pa. 75, 532 A.2d 12 (1987). Mr. Ocasio did not present any additional evidence to support his Complaint.

The Commission's regulation at 52 Pa.Code § 56.191(d) allow a public utility to 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 four years prior to the date of requesting that service be restored. The same Commission regulation clearly instructs that the four-year limit does not apply in instances of fraud and theft. 52 Pa.Code § 56.191(d)

Upon carefully reviewing the record in this matter, I find that the Complainant failed to prove by a preponderance of the evidence that PGW violated a Commission statute, regulation or order when it concluded that theft of service had occurred at the Service Address during the period September 1, 2003– May 16, 2018, and assessed charges related to it against Mr. Ocasio. The evidence presented by Mr. Ocasio is outweighed by the evidence presented by PGW. Mr. Ocasio’s formal Complaint against PGW is dismissed in its entirety.

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. “Mere bald assertions ... do not constitute evidence.” *Mid-Atlantic Power Supply Association of Pa. v. Pa. Pub. Util. Comm’n*, 746 A.2d 1196, 1200 (Pa.Cmwlth. 2000)(citing *Pa. 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).

6. The Complainant failed to meet his burden of establishing that the Company erred in billing him for unauthorized usage at the Service Address from September 1, 2003 to May 16, 2018, based on historical usage at the premises.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Elvin Ocasio against Philadelphia Gas Works at Docket No. F-2018-3003709 is denied.
2. That the Secretary's Bureau mark this matter closed.

Date: February 25, 2019

/s/
Eranda Vero
Administrative Law Judge