

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lawrence Jones	:	
	:	
v.	:	C-2019-3007984
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Lawrence Jones because he failed to sustain his burden of proof to establish that Philadelphia Gas Works erred in billing him for unauthorized usage at the Service Address.

HISTORY OF THE PROCEEDING

On February 11, 2019, Lawrence Jones (Complainant or Mr. Jones) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant alleged that he was incorrectly billed for unauthorized usage of gas services because he has all electric appliances in his home.

On March 14, 2019, PGW filed an Answer with New Matter and Notice to Plead to the Complaint. In its Answer, PGW denied that the Complainant was billed incorrectly for unauthorized usage. In its New Matter, PGW alleged: Mr. Jones was the last customer of record at

the Service Address and his account was finalized as of October 7, 1992; on March 18, 2010, pursuant to a Meter Reclamation Program order, a PGW technician went to the Service Address, but was unable to gain access; gas service to the Service Address was abandoned on March 27, 2018, due to there being no active account; on March 28, 2018, a PGW technician found the gas meter on the porch at the Service Address and obtained a 50 LEL reading from the meter; the Complainant contacted PGW on January 22, 2019 about obtaining gas service; a PGW technician visited the Service Address on January 25, 2019 and determined that both the house heater and the water heater were gas appliances; and on January 29, 2019, PGW billed the Complainant \$24,607.04 for unauthorized usage at the Service Address from March 18, 2010 to March 27, 2018.

By Hearing Notice dated April 4, 2019, an Initial In-Person Hearing was scheduled for Wednesday, May 8, 2019, at 10:00 a.m. and the matter was assigned to the undersigned Administrative Law Judge (ALJ).

On April 10, 2019, a Prehearing Order was issued advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On April 29, 2019, the Complainant requested to appear by telephone, which was treated as a Motion for Change to a Partial Telephonic Hearing.

On May 2, 2019, the undersigned ALJ issued an Order granting the Complainant's Motion for Change to a Partial Telephonic Hearing.

The hearing convened as scheduled on May 8, 2019. The Complainant appeared *pro se* via telephone and testified on his own behalf. The Complainant did not offer any exhibits.

The Respondent appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of the following PGW employees: Nicholas Simeo, a Supervisor; Andre Smith, a Field Service Technician; Antonio Silva, a Field Service Technician; and

Jessica Glace, a Senior Customer Review Officer. During the hearing, the Respondent offered eleven (11) exhibits, all of which were entered into the record.

During the hearing, the Complainant claimed that he did not receive copies of the Respondent's exhibits. Tr. 25. In response, Ms. Christlieb offered to file as a late filed exhibit the Fed Ex tracking information showing the exhibits were delivered to the Complainant on May 7, 2019. Tr. 26-27, 116-117. On May 9, 2019, the undersigned ALJ received a copy of the late filed exhibit marked as "Exhibit 12" and entered it into the record.

The record closed on June 12, 2019, upon receipt of the transcript by the undersigned ALJ.

FINDINGS OF FACT

1. The Complainant is Lawrence Jones.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant resides at 711 Medary Avenue, Philadelphia, Pennsylvania 19126 (Service Address). Tr. 7.
4. The Complainant and his wife have owned the Service Address for approximately 28-30 years. Tr. 8, 18; PGW 1.
5. Prior to October 7, 1992, the Complainant had an account with PGW for the Service Address. Tr. 30-31; PGW 1.
6. On October 7, 1992, the Complainant's account with PGW was terminated for nonpayment with an outstanding balance of \$6,308.34. Tr. 31; PGW 1.

7. The number of the meter that was installed in the Service Address that was terminated in 1992 is No. 1581941. Tr. 32; PGW 1.

8. Meter No. 1581941 is not an automatic meter reading (AMR) meter, which means it needs to be read manually to detect usage¹. Tr. 49.

9. A curb valve allows PGW to shut off the gas supply at the street, before it enters the service address. Tr. 34.

10. In 1992, the gas supply to the Service Address did not have a curb valve. Tr. 34.

11. In order to terminate service in 1992, PGW would have installed a locking device (“V-lock”) inside the home on the gas line leading to the meter. Tr. 38-39; PGW 8.

12. Without a curb valve, the gas could be turned back on by removing the V-lock. Tr. 41-42.

13. On March 18, 2010, PGW attempted to reclaim Meter No. 1581941 from the Service Address but was unable to do so because they could not gain entry to the premises. Tr. 33-34; PGW 2.

14. Under the inactive account program, PGW abandons service to properties that have not been active in a while. Tr. 35-36.

15. Abandonment of service entails digging and disconnecting the gas supply from the main line under the street. Tr. 36.

¹ An AMR meter sends a signal that can be checked remotely without having to gain access to the service address. Tr. 50.

16. On March 27, 2018, PGW performed an abandonment of service at the Service Address. Tr. 35; PGW 3.

17. On or around March 27, 2018, the Complainant removed Meter No. 1581941 from his basement and placed it on his porch. Tr. 15.

18. Andre Smith is a Field Service Technician at PGW. Tr. 52.

19. On March 28, 2018, Mr. Smith visited the Service Address to investigate an unbilled usage tip. Tr. 53-54.

20. Upon arrival at the Service Address, Mr. Smith found Meter No. 1581941 sitting on the porch. Tr. 54-55; PGW 5.

21. Mr. Smith uses a gas detection instrument (GDI) to read gas levels being emitted from meters. Tr. 56.

22. Mr. Smith got a reading of 50 LEL² on his GDI from the meter on the porch. Tr. 57.

23. A reading of 50 LEL means gas was flowing through the meter within the past two days. Tr. 57.

24. Mr. Smith was unable to gain entry to the home. Tr. 57.

25. In or around October of 2018, the Complainant contacted PGW to have his gas service turned on. Tr. 10-12, 100; PGW 11.

26. Antonio Silva is a Field Service Technician at PGW. Tr. 68.

² LEL is short for Lower Explosive Limit, which is defined as the lowest concentration (by percentage) of a gas or vapor in air that is capable of producing a flash of fire in the presence of an ignition source (arc, flame, heat).

27. On January 25, 2019, Mr. Silva visited the Service Address as part of an unbilled usage investigation. Tr. 69-70.

28. Mr. Silva found a gas house heater that was 280,000 BTUs and a gas water heater that was 40,000 BTUs. Tr. 72; PGW 7.

29. The gas water heater was manufactured in 2004. PGW 8, p. 7.

30. Mr. Silva did not find an electric-powered house heater or electric-powered water heater in the home. Tr. 73.

31. Mr. Silva was unable to determine whether the gas appliances were operable because gas service was already terminated. Tr. 79.

32. Mr. Silva found that the V-lock installed in the home was broken. Tr. 86; PGW 8.

33. Jessica Glace is a Senior Customer Review Officer at PGW. Tr. 98-99.

34. PGW calculated the Complainant's unbilled usage based on the BTUs of the appliances found at the Service Address for the timeframe from March 18, 2010 through March 27, 2018. Tr. 102-103; PGW 9.

35. PGW selected March 18, 2010 as the starting date based on the fact that is the date PGW visited the Service Address as part of the Meter Reclamation Program and was unable to gain access to the meter. Tr. 103.

36. The total bill for unauthorized usage for the time period from March 18, 2010 through March 27, 2018 is \$24,607.04. Tr. 103-104; PGW 9, p. 3.

DISCUSSION

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving that he is entitled to the requested relief. 66 Pa.C.S. § 332(a). 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.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 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*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. 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).

In this case, the Complainant has owned the Service Address since around 1988 or 1989. Initially, he had gas service from PGW until it was terminated in 1992 for nonpayment. In or around October of 2018, the Complainant contacted PGW to have his gas service turned back on. PGW informed him that in order to restore his gas service, he would have to pay \$24,607.04 in unauthorized usage charges. PGW calculated the Complainant's unbilled usage based on the BTUs of the appliances found at the Service Address for the timeframe from March 18, 2010 through March 27, 2018.³ The Complainant alleges that these charges are incorrect because he has all electric appliances in his home and has not used gas since it was terminated in 1992. However, the Complainant was unable to produce any evidence to support his claims, such as receipts for the electric appliances, photographs of the appliances, or elevated electric bills. To the contrary, PGW presented substantial evidence of meter tampering and unauthorized gas usage at the Service Address.

During the hearing, PGW established that under its inactive account program, PGW abandoned service to the Service Address on March 27, 2018, since it had not been active since 1992. Abandonment of service entails digging and disconnecting the gas supply from the main line under the street. As a result of his service being abandoned, the Complainant removed the gas meter in his basement and placed it on his porch. The next day, Andre Smith, a Field Service Technician at PGW, visited the Service Address to investigate an unbilled usage tip and found the Complainant's meter sitting on the porch. Mr. Smith tested the meter with his GDI and got a reading of 50 LEL. This is significant because such a high reading from a disconnected meter shows that there was gas flowing through that meter as recent as one or two days prior. This is contradictory to the Complainant's claim that he has not used any gas since his service was terminated in 1992.

Additionally, on January 25, 2019, Antonio Silva, a Field Service Technician at PGW, visited the Service Address as part of an unbilled usage investigation. Upon inspection of the Service Address, Mr. Silva found a gas house heater and a gas water heater. Moreover, Mr. Silva did not find an electric-powered house heater or water heater and the gas water heater that

³ PGW selected March 18, 2010, as the starting date based on the fact that is the date PGW visited the Service Address as part of the Meter Reclamation Program and was unable to gain access to the meter. Tr. 103. However, pursuant to 52 Pa.Code 56.191(d), PGW was entitled to go back to 1992 if they chose to do so.

he did find was manufactured in 2004, which is further proof the Complainant was using gas after his service was terminated in 1992.

Finally, in 1992, the gas supply to the Service Address did not have a curb valve. A curb valve allows PGW to shut off the gas supply at the street, before it enters the service address. Thus, in order to terminate the Complainant's service in 1992, PGW installed a V-lock on the gas line directly before it feeds into the meter. Unfortunately, without a curb valve, the gas could be turned back on by breaking and removing the V-lock. Here, upon inspection, Mr. Silva found that the Complainant's V-lock was broken, further corroborating the Complainant's unauthorized gas usage.

Based on the foregoing, the undersigned concludes that PGW has presented substantial evidence that the Complainant engaged in unauthorized gas usage. This convincing evidence outweighs the Complainant's unsubstantiated contentions that he did not tamper with the meter and has been using electric appliances. See e.g. *MidAtlantic 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*, 532 A.2d 12, 14 (Pa. 1987)("mere bald assertions, personal opinions or perceptions do not constitute evidence.")). As a result, the Complainant did not satisfy his burden and PGW is entitled to require the payment of the Complainant's entire outstanding balance up front as a condition to restore service in his name. See 52 Pa. Code § 56.191(d).

Accordingly, the undersigned finds the Complainant was unable to meet his burden of proof that PGW billed him incorrectly for unauthorized usage for the time period from March 18, 2010 through March 27, 2018, thus, the Complaint must be dismissed and the Complainant is liable to PGW in the amount of \$24,607.04.

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. The Complainant must satisfy his burden of proof 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.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. 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.

5. "Mere bald assertions, personal opinions or perceptions do not constitute evidence." *MidAtlantic 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*, 532 A.2d 12, 14 (Pa. 1987)).

6. 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(d).

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

8. The Complainant failed to meet his burden of establishing that the Respondent erred in billing him for unauthorized usage at the Service Address from March 18, 2010 through March 27, 2018, in the amount of \$24,607.04.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Fed Ex tracking information received on May 9, 2019 as a late filed exhibit shall be marked as “Exhibit 12” and entered into the record;
2. That the Complaint of Lawrence Jones against Philadelphia Gas Works at Docket No. C-2019-3007984, is dismissed;
3. That Docket No. C-2019-3007984 be marked closed.

Date: August 9, 2019

_____/s/
F. Joseph Brady
Administrative Law Judge