

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Morales

v.

Philadelphia Gas Works

:  
:  
:  
:  
:

C-2018-3002466

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

The Complainant is the customer of record for a building that is used periodically by his athletic club and contends that the utility overcharged him for gas service. This decision finds in part for PGW and in part for the Complainant. Although the Complainant did not tamper with the meter, as customer of record, he is responsible to pay for gas usage at the property during the period in question. However, Philadelphia Gas Works is to recalculate estimated usage based on the periodic usage of the club rather than the full-time usage of a residence and issue a bill accordingly.

**HISTORY OF THE PROCEEDING**

On May 21, 2018, Michael Morales (Complainant or Mr. Morales) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In the Complaint, Mr. Morales states that there are incorrect charges on his PGW bill. He further states that he would like PGW to connect the gas meter at the service address and not determine his usage based on the usage of a prior tenant.

On June 22, 2018, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. PGW also stated that the Complainant was properly billed for unbilled usage due to a bypass at the service address, 2248 N. 3rd Street, Philadelphia, Pennsylvania. The Answer also states that the Complainant established residential heat service on January 31, 2014. PGW also averred that a technician exchanged the meter when turning on the gas on January 31, 2014. It is further averred that a technician could not access the meter when seeking to conduct Usage Discrepancy Investigations on April 29, 2017 and May 15, 2017. PGW also states that during a Usage Discrepancy Investigation on May 30, 2017, a PGW technician discovered a tampered meter bypass, a meter usage measuring component hanging from the meter. The technicians removed the meter. On November 17, 2017, a PGW technician gained access to the service address and determined that there was a 50,000 BTU house heater and one 100,000 BTU commercial heater.

The Answer further states that on November 21, 2017, PGW billed the Complainant \$5,013.70 minus the previous amount billed \$1,194.16, or \$3,819.54, for the period January 31, 2014 to May 30, 2017 noting that this calculation was based on BTUs found at the property.

On June 29, 2018, a Hearing Notice was issued setting an Initial Hearing for August 27, 2018, at 10:00 a.m.

A Prehearing Order was issued on July 9, 2018, informing the Complainant of the date of the hearing and providing procedural information.

On the morning of the hearing, PGW informed the undersigned that a witness for PGW had a family emergency and was unable to attend and requested a continuance. An order granting the continuance was issued on August 27, 2018.

On September 10, 2018, a notice rescheduling the hearing for October 25, 2018, at 10:00 a.m. was issued.

The hearing convened as scheduled at 10:00 a.m. on October 25, 2018. On behalf of PGW, Laureto Farinas, Esquire, appeared with three witnesses, prepared to proceed. Mr. Morales was not present. A recess was taken to allow Mr. Morales time to appear.

At approximately 10:25 a.m., the hearing resumed. Mr. Morales was not present. At approximately 10:30 a.m., Mr. Farinas moved that the matter be dismissed for failure to prosecute.

Mr. Morales contacted the Commission in October of 2018 to inquire about the status of the matter and provided a new mailing address. A hearing was rescheduled for December 6, 2018.

A hearing was held on December 6, 2018. Mr. Morales represented himself and presented no exhibits. Attorney Laureto Farinas represented PGW and introduced five exhibits and two witnesses. All exhibits were admitted. The record closed upon receipt of the hearing transcript on January 19, 2019.

An Order was issued on January 28, 2019, that allowed the Complainant until February 8, 2019, to respond to a PGW letter dated January 25, 2019 regarding the issues that remain pending after the hearing.

On March 29, 2019, the Complainant sent a response that included a flash drive that could not be opened, and the contents could not be viewed. Complainant was notified by telephone that the file was unreadable. On April 9, 2019, an Order was issued reopening the record to allow PGW to reply to the Complainant's March 29, 2019 submission.

On April 30, 2019, a Hearing Notice scheduling a further hearing for June 10, 2019 was issued.

Further hearing was held on June 10, 2019. Mr. Morales represented himself and Complainant Exhibits 1 and 2 were admitted. PGW was again represented by Mr. Farinas. PGW did not introduce additional exhibits. One PGW witness testified.

The record closed on July 8, 2019, the day the transcript of the June 10, 2019 hearing was received.

#### FINDINGS OF FACT

1. The Complainant is Michael Morales who is a PGW customer at 2248 N. 3rd Street, Philadelphia, Pennsylvania.
2. Philadelphia Gas Works is the Respondent.
3. The service address is the second floor of a two-story building at 2248 North 3rd Street, Philadelphia, Pennsylvania. (Tr. 5, 9).<sup>1</sup>
4. The first floor of the building is a garage repair shop that is rented out by the owner of the building. (Tr. 8).
5. Mr. Morales is not the owner of the service address but is the PGW customer of record for service for the second floor. (Tr. 8-9).
6. Mr. Morales became the customer of record on January 31, 2014. (Tr. 26, 27; PGW Exhibit 1).
7. On January 31, 2014, a new PGW meter was installed at the service address. (Tr. 27; PGW Exhibit 1, p. 2).
8. The service address is a softball club house used for Friday night meetings all year, after Saturday games during baseball season and for occasional viewing of sporting events. (Tr. 7, 12, 15, 17).
9. The service address is billed at general service residential rates. (Tr. 31).

---

<sup>1</sup> The December 6, 2018 transcript will be referenced herein as Tr. and the June 10, 2019 transcript will be referenced herein as Tr. II.

10. There are two rooms at the service address, a large room and a small closed off room that is not heated. (Tr. 21).
11. There are two heaters at the service address, one at 100,000 BTUs and the second at 50,000 BTUs. (PGW Exhibit 2; Tr. 20-21).
12. A PGW technician visited the service address on May 30, 2017 for a Usage Discrepancy Investigation after the company noticed that the meter registered zero usage readings on several occasions. (Tr. 28, 38-39; PGW Exhibit 2).
13. The PGW technician completed a Theft Reporting Sheet for the service address on May 30, 2017. (PGW Exhibit 2.)
14. The PGW technician photographed the meter and indicated on the Theft Report form that the Electronic Receiver Transmitter (ERT), which records the gas usage, was hanging from the meter. (Tr. 61; PGW Exhibit 2, 6, 7).
15. PGW calculated that the Complainant used 3,344 cubic feet of gas between January 31, 2014, the date the Complainant became customer of record, and May 30, 2017, the date that PGW visited the service address. (Tr. 29. PGW 3).
16. PGW calculated \$5,013.70 as the cost of the 3,344 cubic feet of gas based on estimated usage for the two heaters at the property. (PGW Exhibit 3; Tr. 29).
17. The calculations that PGW used to determine the amount of the Complainant's unbilled service assumed that the heaters were operated at 700 effective full load hours for each year. (Tr. 30).
18. The 700 full load hours estimate was based on a survey of 200 accounts from various locations that could include 24-hour living spaces. (Tr. 39).

19. The 700 effective full load hours each year used by PGW to calculate the estimate of the Complainant's unbilled service was based on the usage at residential service addresses, houses and apartments. (Tr. II at 26).

20. The service address had an active account during the period from January 31, 2014 to May 30, 2017 and \$1,194.16 was paid towards the account. (Tr. 31, PGW Exhibit 4).

21. PGW subtracted the amount paid by the Complainant during the period in question, \$1,194.16, from the estimated cost of the amount used, \$5,013.70, leaving a balance of \$3,819.54. (Tr. 31-33; PGW Exhibit 3).

22. On November 21, 2017, the Complainant was billed for the balance of \$3,819.54 for services between January 31, 2014 and May 30, 2017. (Tr. 29-30; PGW Exhibit 2; PGW Exhibit 3).

23. The Complainant did not move the ERT and was not involved in or aware that there was meter tampering until notified by PGW. (Tr. 18-19).

24. The Complainant contacted PGW in November of 2017 when he noticed that the gas was not on. (Tr. 10).

25. When the Complainant called PGW in 2017 to find out why the gas was not on, he was told by a PGW representative that the gas meter was found on the floor and the company had to investigate. (Tr. 10).

26. In response to the call, PGW sent a technician to the service address; another club member met with the service technician. (Tr. 11).

27. The gas was not turned on after the November 2017 visit by PGW and the service address remained without gas service at the time of the hearing. (Tr. 11).

28. The softball club uses the gas for heating from November to March for Friday night meetings and occasional televised sporting events and the heaters are the only gas appliances at the service address. (Tr. 13, Tr. 68-69).

29. The softball clubs used electric heat after the PGW service was shut off. (Tr. II at 5).

### DISCUSSION

The Pennsylvania Public Utility Code (“Code”) requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities . . . Such service and facilities shall be in conformity with the regulations and orders of the commission. . .

66 Pa.C.S. § 1501. Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

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 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 (*Poorbaugh*), *vacated on other grounds*, 666 A.2d 744 (Pa.Cmwlth. 1995).

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). 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).

The Complainant here alleges that the estimate of PGW for the period of theft of service is too high. The burden of proof for "high bill" complaints was discussed in *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980). In *Waldron*, the Commission stated that the accuracy of the meter is an important factor but not the sole criterion. The Commission stated that it would also consider other factors, such as the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

Discussing the burden, *Waldron* states:

[T]he *Waldron* Rule allows a complainant to establish a *prima facie* case in a "high bill" complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a "high bill" complaint, the Commission may consider such evidence as "the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*"

*Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Order entered November 15, 2011) at 5 (quoting *Bennett v. The Peoples Natural Gas Company*, Docket No. C-2009-2122979 (Order entered October 13, 2010) (emphasis in original)). The Commission has reviewed the

calculation of a bill where the company alleged tampering. *See Morales v. Philadelphia Gas Works*, Docket Number F-2017-2623492 (Order entered July 18, 2018).

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).

Here, PGW terminated the service in May of 2017 after a PGW technician found that someone had tampered with the meter at the property. Mr. Morales filed this Complaint because PGW would not restore service until the Complainant paid the estimated unbilled usage for the period from the date that he became customer of record January 31, 2014, to May 30, 2017, the date service was terminated.

A utility may immediately terminate service when there is tampering with meters. 52 Pa.Code § 56.98(a)(3). Section 56.35(a) further states as follows:

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

52 Pa.Code § 56.35(a).<sup>2</sup>

Also, under 52 Pa.Code § 56.35(b), a utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the utility which accrued within the past four years from the date of the service

---

<sup>2</sup> An Applicant is defined as: (i) A natural person at least 18 years of age not currently receiving service who applies for residential service provided by a public utility or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential public utility service is requested. (ii) The term does not include a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility. 52 Pa.Code § 56.2.

request for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa.Code § 56.35(b)(1). The service address is billed at general service residential rates. (Tr. 31). The four-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. 52 Pa.Code § 56.35(b)(1).

Additionally, 52 Pa. Code § 56.191 provides:

*(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.

Mr. Morales would like PGW to restore gas service to the club house. He is the customer of record for the service address. The service address is the rented second floor of a building that is used by a sports club, a softball team, in which Mr. Morales is a member. The first floor of the building is an auto shop.

The Complainant does not dispute that there was tampering with the meter, although claims he was not involved in the tampering. The credible testimony of Mr. Morales established that he was not involved and did not know about tampering until told by PGW. (Tr. 10, 12, 18). Mr. Morales contacted PGW after discovering in November of 2017 that the gas service was off. Also, there are many members of the sports club as well as the landlord who have access to the club house and its meter. (Tr. 18-19). However, the customer of record is responsible for the tampering at their premises regardless of whether the customer had knowledge of the tampering or not. *Kull v Philadelphia Gas Works*, Docket No. C-2013-2379510 (Final Order entered May 30, 2014).

Mr. Morales does not dispute that there are two heaters at the service address and he did not challenge PGW's assessment that the heaters have a total of 150,000 BTUs. (Tr. 30). However, Mr. Morales disputes the amount that PGW claims that he owes for unbilled usage,

\$3,819.54. Particularly, Mr. Morales challenges the method used by PGW to calculate the unbilled gas usage. It is his position that PGW erred in calculating the amount owed based on a living space. He testified that the club only uses the gas for heat from November to March. (Tr. 12). Everything else in the service address is electric. (Tr. 13, Tr. 68-69). The Complainant also testified that the gas is turned on in the winter months only when the club plans to use it. A member who lives near the building turns on the heat at about noon on days that the club house is used. (Tr. 12).

The Complainant estimates that they heat the service address about 25 days a year. The club has weekly meetings on Fridays throughout the year. (Tr. 11-12). In addition to meetings on Fridays, members occasionally gather at the club house when there is a televised boxing match. (Tr. 15, 20). The only other time that they use the club house is after games on Saturdays during summer months (Tr. 17), when no heat is needed.

PGW contends that the Complainant owes PGW \$3,819.54 for unbilled usage for the period from January 31, 2014 to May 30, 2017. The company noted that the meter measured zero usage or very low usage during winter months. (Tr. 35; PGW Exhibit 4; FOF 33). PGW Field Investigator Chris DiCarlo testified that he was sent to the service address on May 30, 2017, to conduct a Usage Discrepancy Investigation. (Tr. 55, 63; PGW Exhibit 2). He found the ERT separated from the meter, pulled away by about half an inch. After this finding, Mr. DiCarlo terminated the gas service. (Tr. 55; PGW Exhibit 2; Tr. 59, 61).

As the Commission has noted, it is "customary and consistent with the finding of a tampered meter, and consistent with Commission regulations regarding adjustment of bills for meter error" that PGW calculates an estimate for unbilled usage and bill the customer for that amount. See *Morales v. Philadelphia Gas Works*, Docket Number F-2017-2623492 (Order entered July 18, 2018).<sup>3</sup> PGW used its customary method here. (Tr. 30-32). The company determined the unbilled usage with its "BTU Calculator" by entering the BTUs of the heaters, the degree days and other information. (Exhibit 3, Tr. 30). PGW Senior Customer Review Officer

---

<sup>3</sup> The Commission also cited 52 Pa. Code § 59.22(c).

Tiffany Jones testified that that the calculation assumes the heaters are operated "as 700 effective full load hours for the year." (Tr. 30).

PGW determined that the Complainant would have used gas at a cost of \$5,013.70 during the period in question. Because Mr. Morales was billed and paid \$1,194.16 during that period, that amount was subtracted from the unbilled usage estimated total and Mr. Morales was billed for the remaining \$3,819.54.

The "potential for energy utilization " is one of the *Waldron* factors to be considered for a high bill complaint. Complainant questions PGW's 700 effective full load hours figured in calculating his usage. The 700 effective full load hours figure used by PGW is "based on a survey that was taken based on 200 accounts from various locations within the City." (Tr. 39).

Mr. Morales noted that some of the locations included in the calculation could be 24-hour living spaces. (Tr. 39). In particular, PGW's estimate is based on the usage profiles of residents, houses and apartments. (Tr. II at 26). Mr. Morales credibly testified that the softball club does not use the heat every day in the winter.

The Complainant's credible testimony is that the service address is used as a club house for a summer softball team with weekly meetings and occasional use in the winter months. To further support his position that the club only used the service address occasionally and not daily, Mr. Morales presented PECO daily usage reports showing fluctuations in electricity usage. The Complainant testified that the club has been using electric heat since PGW shut off its gas service and its usage of electric heat since then corresponds to its use of gas heat prior to the shut off. (Tr. II at 5, 17).

The PECO readings show higher usage on Fridays for meetings during the months of October, November and December of 2018. (Complainant Exhibits 1 and 2). There are also a few other high usage days, which the Complainant notes were cleaning days or fight nights. (Tr. II at 8, Complainant Exhibit 2). There are also days with zero usage of electricity. (Complainant Exhibits 1 and 2).

Ms. Jones testified on behalf of PGW that the available usage calculator employed by PGW to determine unbilled usage provides a "conservative estimate." (Tr. 30). It was reasonable of PGW to use that standard calculation at that time. *See* 66 Pa.C.S. § 1501.

However, the Complainant's credible testimony that the service address is used as a club house for a summer sport softball team with weekly meetings and occasional use in the winter months, supported by the PECO electric heating usage records, establish by a preponderance of the evidence that the standard method used by PGW, employing usage information regarding residences, did not give the correct consumption for the period. The Complainant presented evidence beyond a mere "trace of evidence or a suspicion" and will prevail here. *See Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

PGW will be directed to recalculate the usage based on the periodic usage of the club rather than the full-time usage of a residence.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Any offense alleged by the Complainant must be a violation of the Public Utility Code ("Code"), the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

3. The Complainant bears the burden of proof. Section 332(a) of the Code, 66 Pa.C.S.A. § 332(a).

4. A utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the utility which accrued within the past four years from the date of the service request for which the applicant is legally responsible and for which the applicant was billed properly. 52 Pa.Code § 56.35(b)(1).

5. The Commission may review the calculation of a bill issued for unbilled gas usage after tampering is discovered. *Morales v. Philadelphia Gas Works*, Docket Number F-2017-2623492 (Order entered July 18, 2018).

6. Evidence regarding potential energy utilization and any other relevant facts or circumstances that come to light during the proceeding may be considered when reviewing a high bill claim. *Thomas v. PECO Energy Company*, Docket No. C-2010-2187197 (Order entered November 15, 2011) at 5 (quoting *Bennett v. The Peoples Natural Gas Company*, Docket No. C 2009-2122979 (Order entered October 13, 2010)).

7. The Complainant established by a preponderance of the evidence and beyond a mere trace of suspicion that the standard calculations for unbilled service used by PGW was in error. *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); *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Michael Morales v. Philadelphia Gas Works at Docket No. C-2018-3002466 is granted, in part, and denied, in part.

2. That the Complaint is denied with respect to Philadelphia Gas Works' initial calculation of unbilled tampering usage and the initial bill issued.

3. That the Complainant is granted with respect to Philadelphia Gas Works' use of residential statistics to estimate usage to determine the amount that the Complainant must pay to have gas service restored at the club house.

4. That Philadelphia Gas Works is directed to recalculate the unbilled service at the service address, 2248 North 3rd Street, Philadelphia, Pennsylvania, for the period from January 31, 2014 to May 30, 2017 in accordance with this decision.

5. That Philadelphia Gas Works shall issue the recalculated bill to the Complainant within 60 days of the entry of a Final Order of the Commission in this case.

6. That Docket No. C-2018-3002466 be marked closed.

Date: September 26, 2019

\_\_\_\_\_/s/\_\_\_\_\_  
\_\_\_\_\_

Darlene Davis Heep  
Administrative Law Judge