

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held March 10, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Elvin Ocasio

F-2018-3003709

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Elvin Ocasio, (Mr. Ocasio or Complainant) filed on April 1, 2019, to the Initial Decision (I.D. or Initial Decision) of Administrative Law Judge (ALJ) Eranda Vero, served on the Parties on March 5, 2019, in the above-captioned proceeding. On July 15, 2019, Philadelphia Gas Works (PGW or the Company) filed Replies to Exceptions.¹ The Initial Decision denied the Formal

¹ As a procedural matter, the Company's Reply Exceptions were not due until July 15, 2019, due to procedural deficiencies in service of the Complainant's Exceptions. Service of the Complainant's Exceptions to PGW was perfected by letter of the Secretary's Bureau, dated July 3, 2019, granting PGW until July 15, 2019, to file Reply Exceptions.

Complaint (Complaint) filed by Mr. Ocasio on July 20, 2018. For the reasons discussed below, we shall deny the Complainant's Exceptions and adopt the Initial Decision of ALJ Vero, consistent with this Opinion and Order.

I. Background

This case involves a Complaint challenging PGW's determination of theft of use of residential gas service and estimated billing of Mr. Ocasio for unmetered gas service usage at his residence for a period of fifteen years, from September 2003 to May 2018, totaling \$20,012.59. Mr. Ocasio, a *pro se* complainant, has alleged that PGW improperly determined that he had unlawfully used gas service, and challenged PGW's basis for calculation of the estimated unmetered gas service.

As relief, Mr. Ocasio requested that the Commission rescind PGW's bill and that PGW be required to restore gas service at his residence upon Mr. Ocasio's future request. I.D. at 1.

II. History of the Proceeding

On July 20, 2018, Mr. Ocasio filed the instant Complaint² with the Commission, alleging that PGW had falsely accused him of meter tampering to bypass metered gas service totaling an estimated \$20,012.59, in gas service charges. He stated that he has never had gas service in his name at his residence and only used electric utility service during the fifteen-year period in question. The Complainant requested that

² This was an appeal of a decision from the Commission's Bureau of Consumer Services (BCS) at Case No. 3618392. Appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

the Commission order PGW to rescind the gas bill issued to him for unmetered gas usage at the property. Complaint at ¶¶ 4-5.

On August 21, 2018, PGW filed an Answer which denied the material averments in the Complaint. PGW noted that the Complainant has been the owner of the property at 5914 Palmetto Street, Philadelphia, PA 19120 (Service Address) since August 13, 1998, and that, according to the BCS decision attached to its Answer as “Exhibit A,” gas service at the Service Address was initially terminated on May 21, 2003. The Company stated that a PGW technician was sent to the Service Address on an unbilled usage investigation and found evidence of gas theft. PGW indicated that it proceeded to bill the Complainant \$20,012.59 for the period from September 1, 2003 to May 16, 2018, in unauthorized usage, based on estimated usage over that period. Finally, PGW requested that the Commission find against the Complaint and affirm the BCS decision, which concluded, *inter alia*, that the Complainant is responsible for bypass charges in the amount of \$20,012.59, as estimated *based on historical usage*, plus a reconnection charge of \$123.23, a \$327 dig fee, and a security deposit of \$380. Answer at 1-2; Exhibit A (emphasis added).

On October 17, 2018, ALJ Vero convened the Initial Hearing as scheduled. The Complainant appeared *pro se* and testified on his own behalf. Four exhibits (Complainant Exhibits 1-4) were admitted on behalf of the Complainant. PGW was represented by counsel who presented the testimony of four witnesses, Kimberly Cowan, a field service technician for PGW, Nicolas Simeo, a supervisor in PGW’s Revenue Protection Unit, Joseph Leva, superintendent of operations and maintenance for PGW, and Jessica Glace, a customer review unit officer for PGW. PGW presented seven exhibits (PGW Exhibits 1-7), which were admitted into the record. A transcript of the proceeding consisting of 125 pages was filed on November 9, 2018.

On March 5, 2019, the Commission issued the Initial Decision of ALJ Vero, which dismissed the Complaint for failure of the Complainant to meet his burden of proving that PGW violated a statute or Commission Regulation or order when it concluded that theft of service occurred at the Service Address and assessed charges related to it against Mr. Ocasio. I.D. at 1, 13.

As noted, *supra*, the Complainant filed Exceptions to the Initial Decision on April 1, 2019. PGW filed Replies to Exceptions on July 15, 2019.

III. Discussion

A. Legal Standards

As the party seeking affirmative relief from the Commission, the complainant in a formal complaint proceeding has the burden of proof. 66 Pa. C.S. § 332(a). The evidence necessary to meet that burden must be substantial. 2 Pa. C.S. § 704. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938). 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. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the respondent utility is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code (Code), a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa. C.S. § 701. Such a showing must be by a “preponderance of the

evidence.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant’s evidence must be more convincing, by even the smallest amount, than that presented by the respondent. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

The burden of proof is comprised of two distinct burdens: (1) the burden of production; and (2) the burden of persuasion. *Hurley v. Hurley*, 2000 Pa. Super. 178, 754 A.2d 1283 (2000). The burden of production, also called the burden of going forward with the evidence, determines which party must come forward with evidence to support a particular claim or defense. *Scott and Linda Moore v. National Fuel Gas Distribution*, Docket No. C-2014-2458555 (Initial Decision issued May 11, 2015) (*Moore*). The burden of production goes to the legal sufficiency of a party’s claim or affirmative defense. *See Id.* It may shift between the parties during a hearing. A complainant may establish a *prima facie* case with circumstantial evidence. *See Milkie v. Pa. PUC*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001) (*Milkie*). If a complainant introduces sufficient evidence to establish legal sufficiency of the claim, also called a *prima facie* case, the burden of production shifts to the utility to rebut the complainant’s evidence. *See Moore*.

If the utility introduces evidence sufficient to balance the evidence introduced by the complainant, that is, evidence of co-equal value or weight, the complainant’s burden of proof has not been satisfied and the burden of going forward with the evidence shifts back to the complainant, who must provide some additional evidence favorable to the complainant’s claim. *See Milkie*, 768 A.2d at 1220; *see also, Burlison v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d*, 501 Pa. 433, 461 A.2d 1234 (1983).

Having produced sufficient evidence to establish legal sufficiency of a claim, the party with the burden of proof must also carry the burden of persuasion to be

entitled to a favorable ruling. *See Moore*. While the burden of production may shift back and forth during a proceeding, the burden of persuasion never shifts; it always remains on a complainant as the party seeking affirmative relief from the Commission. *See Milkie*, 768 A.2d at 1220; *see also, Riedel v. County of Allegheny*, 633 A.2d 1325, 1328, n. 11 (Pa. Cmwlth. 1993); *see also, Burlison*, 443 A.2d at 1375. It is entirely possible for a party to carry the burden of production but not be entitled to a favorable ruling because the party did not carry the burden of persuasion. *See Moore*. In determining whether a complainant has met the burden of persuasion, the fact-finder³ may engage in determinations of credibility, may accept or reject testimony of any witness in whole or in part, and may accept or reject inferences from the evidence. *See Moore*, citing *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005), *appeal denied*, 586 Pa. 776, 895 A.2d 1264 (2006).

At the hearing, a complainant may prove his/her claim through the complainant's own personal testimony and/or "the testimony of others as well as other evidence that goes to that issue." *Romeo v. Pa. PUC*, 154 A.3d 422, 430 (Pa. Cmwlth. 2017) (*Romeo*).

Pursuant to Section 1501 of the Code, a public utility has a duty to maintain "adequate, efficient, safe, and reasonable service and facilities" and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. *See*, 66 Pa. C.S. § 1501. Section 1501 of the Code, 66 Pa. C.S. § 1501, provides, in pertinent part, as follows:

³ In formal complaint proceedings, the Commission, not the ALJ, is the ultimate fact-finder; it weighs the evidence and resolves conflicts in testimony. When reviewing the initial decision of an ALJ, the Commission has all the powers that it would have had in making the initial decision except as to any limits that it may impose by notice or by rule. *Milkie*, 768 A.2d at 1220, n. 7 (citing, *inter alia*, 66 Pa. C.S. § 335(a)).

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 and facilities shall be in conformity with the regulations and orders of the commission.

The term “service” is defined broadly under Section 102 of the Code to include any and all acts done or rendered, or performed and any and all things furnished or supplied and any and all facilities, used, furnished or supplied by public utilities. *See*, 66 Pa. C.S. § 102. The statutory definition of “service” is also to be broadly construed by the Commission and the courts. *Country Place Waste Treatment Co., Inc. v. Pa. PUC*, 654 A.2d 72 (Pa. Cmwlt. 1995).

Finally, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlt. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

B. ALJ’s Initial Decision

In the Initial Decision, ALJ Vero made thirty-five Findings of Fact (FOF) and reached six Conclusions of Law (COL). I.D. at 2-6, 13-14. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

The ALJ reviewed facts in this case under which the Parties disputed whether the unauthorized usage of PGW's gas service occurred and, if so, what the consequences of the unauthorized usage should be, in the circumstances. Based upon the facts, the ALJ concluded, *inter alia*, that in order for the Complainant to establish service in his name, he would need to pay \$20,697.82, which includes bypass charges of \$20,012.59, a \$123.23 reconnection fee, a \$327 dig fee, and 50% of the \$380 security deposit or \$190.

With respect to the pertinent facts, it is undisputed that the Complainant has owned the property and resided at the Service Address, since he purchased the property in 1998. However, gas service at the property was in the name of his former partner and mother of his children, Ely Rivera, until May 21, 2003 when service was terminated for non-payment. Tr. at 12-13, 17-45; PGW Exh. 1 at 1. Following the 2003 termination, no one has since applied to receive gas service at the Service Address. Tr. at 46.

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 inactive service [line] with an inactive account." Tr. at 46-47; PGW Exh. 1. The contractor's technicians informed the Complainant 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. at 7, 13. After speaking with the contractor's technicians, the Complainant contacted PGW, concerning the digging in front of his property, 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. at 7, 13-14.

The Complainant's May 16, 2018 telephone call prompted PGW's customer service 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. at 49-50; PGW Exh. 5. The Complainant was informed that a PGW technician was on his way and would be at the Service Address shortly to check the safety of the service line. Tr. at 7, 51; PGW Exh. 5. When the PGW technician arrived at the Service Address on May 16, 2018, Mr. Ocasio had already left for work and the technician was unable to gain access to the meter. Tr. at 8. The service abandonment was completed at the main on May 16, 2018.

On May 16, 2018 the Complainant contacted PGW a second time, inquiring about the restoration of service at the Service Address. Tr. at 52; PGW Exh. 6. The Complainant was informed that a PGW technician needed to check the meter before service could be restored and an appointment was set up for May 21, 2018. *Id.* During the May 21, 2018 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. at 8,18. Following the technician's visit, the Complainant received a bill from PGW for approximately \$20,000 in connection with theft of service. Tr. at 8.

Based upon the foregoing facts, the two main issues litigated before the ALJ included: (1) PGW's allegation of meter tampering/unauthorized gas usage by Mr. Ocasio; and (2) responsibility for unauthorized usage and restoration of service.

With respect to meter tampering, at hearing the Complainant denied tampering with the utility service at the Service Address, alleging that PGW did not properly investigate the charges of theft of service against him. Tr. at 8, 10. The Complainant acknowledged that he has been the owner of the property at the Service Address since 1998; however, gas service at the property had always been in the name of his former partner and mother of his children. Tr. at 12. The Complainant further testified that gas service at the Service Address had been off since 2003 and that following the 2003 termination, he has been the sole resident at the Service Address, with his son visiting on and off. Tr. at 14, 17-18.

Furthermore, the Complainant explained that due to his many years as a long-haul truck driver, causing him to spend most of his time away from home, he had eliminated his gas usage by using an alternative form of heat (an electric space heater), replacing his gas clothes dryer with an electric clothes dryer, and modifying his gas water heater to work with electricity by watching an instructional video on YouTube. Tr. at 10, 15-16, 19, 20, 23-24. The Complainant added that because he was forced into a more regular schedule in 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. at 14, 16-17.

In response, PGW presented the testimony of field service technician, Kimberly Cowan. On May 21, 2018, Ms. Cowan visited the Service Address on an unbilled usage investigation. Tr. at 26; PGW Exh. 2 at 1. Ms. Cowan found the gas off at the Service Address and recalled the “odd” state of the bike lock on the meter, noting that it was shiny even though the service at the Service Address had been shut off fifteen years earlier. Tr. at 27, 40. During the investigation, Ms. Cowan discovered the Encoder Receiver Transmitter (ERT) head removed from the gas meter located in the basement of the Service Address. Ms. Cowan classified the removal of the ERT head from the gas meter as meter tampering, explaining that because the ERT is the device that records and reports gas readings to the Company, the removal of the ERT prevents consumer consumption from being registered. Tr. at 27-29, 39, 42-43. In response to the Complainant’s testimony regarding modifications which he claimed to have made to his gas water heater, Ms. Cowan stated that she did not see any modifications to the water heater, nor did Mr. Ocasio point them out to her. Tr. at 30.

Ms. Cowan further testified that she tested the fuel line on the customer side of the meter with a handheld gas detection device called a SENSIT and got a reading of “five [percent] natural gas.” Both PGW witnesses Cowan and Nicholas Simeo testified that any gas left in a fuel line following disconnection will eventually dissipate, with Mr. Simeo specifying 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. at 33, 38, 58-59, 63-64; PGW Exh. 2. Both Ms. Cowan and Mr. Simeo testified that such a high level of gas in the fuel line, when the service was supposed to have been disconnected in 2003, indicates that the gas had recently been on at the Service Address. Tr. at 33, 38, 58-59.

Mr. Simeo indicated that it was evident that Mr. Ocasio's gas meter was tampered with based on Ms. Cowan's reported observations from her inspection and the change in the index in Mr. Ocasio's meter since service was terminated in 2003. 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 was no record of such an observation on her part. Secondly, Mr. Simeo asserted that a properly functioning meter would have registered the flow of gas from a broken lock to the Complainant's fuel line. Tr. at 65. However, Mr. Simeo testified that 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 on May 16, 2018 when Ms. Cowan removed it from the Service Address. Tr. at 65-66; PGW Exhs. 1 and 2.

Further, Mr. Simeo indicated that between 2003 and 2004, the meter serving the Service Address had registered several tilt and magnetic tamper counts.⁴ Tr. at 54; PGW Exh. 1. Mr. Simeo testified that the tilt tamper count is indicative of the meter being tilted beyond a certain angle which triggers the count, which suggests

⁴ As explained at Finding of Fact Nos. 7 and 8 in the Initial Decision, the gas meter serving the Service Address registered tilt counts on September 19, 2003 and February 20, 2004. PGW Exh. 1 at 6.

tampering.⁵ Tr. at 54-55. 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. at 57.

With respect to responsibility for unauthorized usage and restoration of service, the Complainant alleged that he should not be responsible for the unauthorized usage. The Complainant asserted that he was never a customer of PGW, since service was in the name of his former partner until service termination in May of 2003, and that after the 2003 termination, no one applied to receive gas service at the property. Tr. at 12, 17, 45-46.

Regarding PGW's estimated bill for gas service at the Service Address between September 1, 2003 (when the first tilt count was reported following the termination of service at the Service Address) and May 16, 2018, PGW witness Jessica Glace testified and demonstrated that these charges were calculated based on historic usage at the Service Address between May 2001 and April 2002. Tr. at 94-95; PGW Exh. 3. Ms. Glace explained PGW Exhibit 3, which illustrates how PGW utilized the 77,500 cubic feet (775 Ccf) of gas that was actually used at the Service Address during the twelve-month period from May 2001 through April 2002 to estimate that approximately 11,563 Ccf of gas was used between September 1, 2003 and May 16, 2018 at the Service Address, generating a bill of \$20,012.59. Page 5 of PGW Exhibit 3 shows this amount includes a customer charge of \$2,157.74, a commodity charge of \$8,784.06, a distribution charge of \$8,934.68, a Weather Normalization Adjustment charge of \$163.98, and a Distribution System Improvement Charge (DSIC) of \$214.70, less a Gas Cost Adjustment of \$242.57 for a total estimated bill of \$20,012.59 for unauthorized

⁵ Tamper counts on the meter is a reference to two switches inside the ERT device, a tilt tamper switch and a magnetic tamper switch. When the device is tilted or encounters magnetism the respective switch detects it and sends a signal to PGW and PGW software reports it. After the meter is installed, these switches should never change.

usage between September 1, 2003 and May 16, 2018. PGW Exh. 3; Tr. at 94-95, 98-100.⁶

PGW placed the responsibility for the alleged estimated unauthorized usage on the Complainant and justified the subsequent billing for said estimated unauthorized usage, based not only on the tampering allegations, but on the implied characterization of Mr. Ocasio as “an applicant” under Section 1403 of the Code. Both Ms. Glace and Joseph Leva expressed their opinion that Mr. Ocasio’s intention to get gas service turned on at his property was more immediate than described in his testimony. Ms. Glace averred that Mr. Ocasio made statements indicating that he would like gas service turned on in his name at the Service Address during both his May 16, 2018 telephone calls to PGW and in the informal complaint Mr. Ocasio filed with the BCS on May 25, 2018. Tr. at 97-98; PGW Exh. 4. Mr. Leva provided details about PGW’s “active service/inactive account” (ASIA) program, indicating that 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. at 85-87.⁷

Upon consideration of the record and the positions of the Parties, ALJ Vero denied and dismissed Mr. Ocasio’s Complaint. ALJ Vero concluded that the Complainant failed to carry his burden of proving that PGW violated a statute or

⁶ The parameters used for the bill calculation on page 5 of PGW Exhibit 3 allow for any rate changes that occurred during the fifteen years spanning the period of alleged theft. Tr. at 99-100.

⁷ 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 ASIA program for the Company to abandon gas service at the address by shutting off gas service at the main line. Tr. at 85-86, 90. Mr. Leva explained that the Company had 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. He added that, once the ASIA service abandonment is completed, there is no more possibility of gas theft occurring at a particular address. Tr. at 86.

Commission Regulation or order when it concluded that theft of service had occurred at the Service Address and assessed charges related to that theft against Mr. Ocasio. The ALJ's Initial Decision provides in pertinent part:

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[s] 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).

I.D. at 12.

In summary, the ALJ was persuaded that, based upon the credible evidence of PGW's witness that there was evidence of meter tampering and recent gas flow to the residence, which the Complainant did not rebut, it was reasonable for PGW to determine that there had been unauthorized gas usage at the residence. The ALJ, therefore, accepted

as reasonable, PGW’s calculation of bypass service beginning on September 1, 2003, based upon the first “tilt count” reported following termination of service in May 2003, until termination of service at the main on May 16, 2018, which would have precluded any further flow of gas to the residence. The ALJ further concluded that, in absence of any metered usage during the fifteen-year period to form the basis of the billing calculation, it was reasonable for PGW to estimate usage over the fifteen-year period based upon records of historical usage at the residence from May 2001 to April 2002. I.D. at 11-13.

C. Complainant’s Exceptions and PGW’s Reply Exceptions

1. Complainant’s Exceptions

The Complainant’s Exceptions consist of a single typewritten page in which he generally expresses his disagreement with ALJ Vero’s ruling and her decision to dismiss the Complaint, including a request for removal of his debt and a further investigation into PGW’s accusations against him.⁸ The Complainant reiterates the same arguments he raised at the evidentiary hearing, such as his assertion that he did not tamper with the meter or attempt to renew services in his name, but rather replaced, doubled or modified all the gas appliances in his property with electrical ones, since he has been the sole resident at the property since 2003 and spent most of his time on the road. Mr. Ocasio continues by maintaining the reason behind his May 16, 2018 telephone call to PGW was to prevent abandonment of his service line because he was

⁸ We acknowledge that the format of the Complainant’s Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination.

planning to get gas service in the future, as a result of his son's recent interest in moving into the property. Exc. at 1.

2. PGW's Replies to Exceptions

In its Replies to Exceptions, PGW counters that the Complainant's Exceptions fail to address any error in fact or law contained in the Initial Decision or demonstrate that the Initial Decision is unsupported by substantial evidence, which would support the Commission's reversal or modification to the Initial Decision. R. Exc. at 2. Additionally, PGW asserts that the Complainant has failed to provide any evidence or witnesses to support his claim that he simply did not need gas for the almost fifteen-year period between 2003 and 2018 because of his work and relationship situation. PGW continues by submitting that the Complainant has not addressed the simple mechanics of how his household functioned without gas for a decade and a half when his house heater and water heater are both gas appliances. *Id.* Lastly, PGW contends that Mr. Ocasio offered no testimony regarding such things as how he kept his pipes from freezing, nor did he provide photographs of the alleged modifications he made to his gas water heater to make it run on electric power. R. Exc. at 2-3. Therefore, for these reasons, PGW requests that the Commission deny the Complainant's Exceptions. R. Exc. at 3.

D. Disposition

In this case, the issue is whether the meter at the Service Address had been tampered with, and if so, (1) whether PGW properly billed Mr. Ocasio meter bypass charges as the party responsible for the estimated unauthorized usage and (2) whether the amount of \$20,697.82 billed by PGW to the Complainant, in order to establish service, is reasonable and appropriate, under Section 1501 of the Code.

First, we will address whether the ALJ properly determined that the Complainant's unauthorized usage was based upon evidence of "meter tampering." The Commission's Regulations define unauthorized usage of service to include "meter tampering" as follows:

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.

We find the testimony from the Company witnesses compelling and based on the testimony, we find PGW properly determined that meter tampering and theft of gas service through Company equipment occurred at the Service Address. Based on the missing red safety caps on the ERT head, the fuel line on the customer side of the meter registering a five percent natural gas reading, and several tilt counts registered in 2003 and 2004, we conclude PGW has presented convincing evidence that the Complainant's meter was tampered with. Only a faulty meter or meter tampering can explain an absence of any movement of the index in the meter at the Service Address since 2003, in conjunction with the existence of such a substantial amount of residual gas left inside the pipes. If the lack of readings was the cause of a faulty meter, there would be no evidence of tampering like that found by Ms. Cowan.

Like the ALJ, we conclude that the Company's evidence of meter tampering was not rebutted by the Complainant other than his contention that he did not tamper with the meter. Furthermore, although Mr. Ocasio testified that he modified his gas water heater to work with electricity, the PGW technician testified to her personal observations at the Service Address. PGW technician, Ms. Cowan, stated that, during her

May 21, 2018 visit to the Service Address, she did not see any modifications to the Complainant's gas water heater.

Second, we will address whether PGW properly billed Mr. Ocasio meter bypass charges as the party responsible for the estimated unauthorized usage. We conclude that under the facts presented, immediately preceding the theft of service, the Complainant was PGW's customer, as defined under Section 1403 of the Code, 66 Pa. C.S. § 1403, and the Commission's Regulations. *See* 52 Pa. Code § 56.2.⁹

The Complainant continued to reside at the Service Address and sought to have gas service restored in his name. Therefore, PGW has the right to bill and receive payment for the utility service actually supplied.¹⁰ All customers are obligated to pay for utility service. Otherwise, a customer's unpaid bills are included in the utility's uncollectible expenses and ultimately paid for by other utility customers. *Scaccia v. West Penn Power Co.*, 55 Pa. P.U.C. 637 (1982); *Mill v. Pa. PUC*, 447 A.2d 1100 (1982); *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Order entered April 8, 1988).

⁹ Section 1403 of the Code provides the following definition:

Customer. A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested...

66 Pa. C.S. § 1403 (Definition of "Customer").

¹⁰ 66 Pa. C.S. § 1303; *Neal v. Philadelphia Gas Works*, Docket No. Z-00971874 (Final Order entered January 4, 2002); *Angie's Bar v. Duquesne Light Company*, 72 Pa. PUC 213 (1990).

Moreover, PGW's calculation of the Complainant's bill for unauthorized usage is reasonable and consistent with the Company's customary practice. PGW selected September 1, 2003, when the first evidence of tampering was registered following the termination of service at the Service Address, as the starting date of the bill. PGW then billed for unauthorized usage to May 16, 2018, the date service was abandoned at the main. PGW used the historical usage at the Service Address and the number of degree days during the relevant period to calculate the amount due. If the Complainant's household size and energy usage changed after 2003, it was the Complainant's meter tampering actions that prevented PGW from having more recent data for its calculation of the bill. For the above-stated reasons, the Complainant's Exceptions should be denied. We note that the Complainant's meter registered several "tilt counts" between 2003 and 2004, which is evidence of tampering. A PGW employee did not visit the Service Address until 2018 to abandon service at the main. The Commission has previously warned PGW that its failure to gain access to a meter after years of inactivity is unacceptable.¹¹ The Commission has also stated that PGW's failure to investigate suspected tampering may be considered unreasonable service in violation of Section 1501 of the Code.¹² We re-emphasize that theft of service is not only a financial issue for PGW and its ratepayers, but a public safety issue. The unsafe conditions created by meter tampering and theft of service can cause serious personal injury or extensive property damage. Fortunately, neither occurred in this case despite almost fifteen years of unauthorized usage. PGW and all of our natural gas distribution

¹¹ *Morales v. Philadelphia. Gas Works*, Docket No. F-2017-2623492 (Final Order entered July 18, 2018).

¹² 66 Pa. C.S. § 1501. *DiAntonio v. Philadelphia. Gas Works*, Docket No. F-2017-2634058 (Final Order entered July 13, 2018).

companies have a duty to monitor their distribution facilities to prevent occurrences of theft of service.¹³

IV. Conclusion

Based upon our review of the record and the applicable legal standards, we shall deny the Complainant's Exceptions and adopt the Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Elvin Ocasio on April 1, 2019, to the Initial Decision of Administrative Law Judge Eranda Vero, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Eranda Vero, issued on March 5, 2019, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Elvin Ocasio on July 20, 2018, at the above docket, is denied, consistent with this Opinion and Order.

4. That Elvin Ocasio's service to 5914 Palmetto Street, Philadelphia, PA 19120, shall be restored upon payment of reconnection fees, including a dig fee and a security deposit, plus a repayment of estimated unmetered gas service usage

¹³ See, Statement of Chairman Gladys M. Brown in *Bretz v. Philadelphia. Gas Works*, Docket No. F-2016-2543880 (December 7, 2017) and Statement of Chairman Gladys M. Brown in *Philadelphia. Gas Works v. Madison*, Docket No. F-2017-2611805 (July 12, 2018)

at his residence for a period of fifteen years, from September 2003 to May 2018, totaling \$20,012.59.

5. That the Secretary's Bureau shall mark this proceeding closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: March 10, 2022

ORDER ENTERED: March 29, 2022