

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jamal Hicks	:	
	:	
v.	:	F-2024-3045789
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Michael J. Mroczka  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint for failure of Complainant to meet the burden of proof that Philadelphia Gas Works violated the Public Utility Code, a Commission regulation, or a Commission Order by holding him responsible for unauthorized usage charges at the service address.

**HISTORY OF THE PROCEEDING**

On January 3, 2024, Jamal Hicks (Complainant or Mr. Hicks) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent).<sup>1</sup> In his Complaint, Mr. Hicks checked the box for “Other” and explained:

[t]he Gas company is trying to charge me the property owner over 2800 dollars in order for me to switch the Gas into my name and to have a meter installed at the property. The 2800 dollars is

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<sup>1</sup> The Complaint is a timely appeal of a decision by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3959429. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

from unauthorized usage. I explained that there was a tenant living there and she was responsible for the unauthorized usage. The tenant moved in the property April of 2022, I evicted her and took back possession of the property in October of 2023. I have provided all documentation to the Gas Company as well as the P.U.C. to prove that I'm not responsible for this.

Compl. ¶ 4. As relief, Mr. Hicks requested that PGW go after his prior tenant for the charges.

On February 23, 2024, PGW filed a timely Answer to the Formal Complaint which admitted or denied various material allegations of the Complaint.<sup>2</sup>

By Hearing Notice dated February 27, 2024, an Initial Call-In Telephonic Hearing was scheduled for April 15, 2024, and the matter was assigned to me.

A Prehearing Order was issued and served on March 15, 2024, reminding the parties of the date and time of the scheduled hearing, and informing them of the procedures applicable to this proceeding.

On April 15, 2024, the hearing convened as scheduled. The Complainant appeared, *pro se*. Complainant offered four exhibits, which were admitted into the record. Attorney Graciela C. Christlieb, Esq., appeared on behalf of PGW and presented the testimony of two witness, Albert Teti, general supervisor of the revenue protection unit at PGW and Jessica Antonetti, senior customer review officer. PGW's witnesses sponsored seven exhibits, which were admitted into the record. The following Exhibits were entered into the record:

Complainant Exhibit 1 – Emails between Mr. Hicks and PGW's Landlord Cooperation Program

Complainant Exhibit 2 – Landlord/Tenant Judgment by Agreement

Complainant Exhibit 3 – Lease

Complainant Exhibit 4 – Landlord/Tenant Writ of Possession

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<sup>2</sup> The Formal Complaint was served on PGW on January 25, 2024.

PGW Exhibit 1 – Degree Days Calculator

PGW Exhibit 2 – Photographs of Meter

PGW Exhibit 3 – Copy of AIMS Order

PGW Exhibit 4 – Customer Contacts

PGW Exhibit 5 – Deed

PGW Exhibit 6 – Degree Calculation

PGW Exhibit 7 – Lease

During the hearing, I requested that PGW submit exhibits indicating why more recent dates were not used in the calculation of the gas usage. Tr. 56, 65. On April 25, 2024, PGW provided their supplemental exhibits via email. Complainant did not object to the supplemental exhibits. The following exhibits will be entered into the record in the ordering paragraphs below:

PGW Exhibit 8 (Supplemental) – Premise Billing History

PGW Exhibit 9 (Supplemental) – Premise Billing History with interrupted service removed

The record closed on May 7, 2024, upon the filing of the 68-page transcript with the Commission.

### FINDINGS OF FACT

1. The Complainant is Jamal Hicks, an individual who resides at 2500 Drexel Hill Road, Drexel Hill, Philadelphia PA 19026. Tr. 9.

2. Jamal Hicks is the owner of the residence at 20 North Dewey Street, Philadelphia, PA, 19139 (service address). Tr. 9; PGW Ex. 5.

3. The Respondent is Philadelphia Gas Works, a jurisdictional public utility, which provided gas service at the service address.

4. Complainant acquired the service address on November 14, 2012. Tr. 21; PGW Ex. 5.

5. Complainant leased the service address to a tenant on April 1, 2022. Tr. 21; Compl. Ex. 3; PGW Ex. 7.

6. The gas service at the service address was shut off at the curb on October 4, 2022, due to non-payment. Tr. 30, 49; PGW Ex. 4 at 1.

7. The tenant was evicted from the service address. Tr. 18; Compl. Exs. 2, 4.

8. On November 14, 2023, Complainant contacted PGW to have the gas service transferred to his name. Tr. 17-18, 31; PGW Ex. 4 at 2.

9. On November 17, 2023, PGW went to the service address to turn the service on. Tr. 32; PGW Ex. 4 at 4.

10. On November 17, 2023, PGW found the gas on at the curb and found that the meter was tampered with. PGW removed the meter and left the gas off at the curb with an anti-theft device in place. Tr. 32-33, 35, 37-38, 49; PGW Exs. 1, 2, 3.

11. The gas meter is located in the basement of the service address. Tr. 18, 39.

12. During the November 17, 2023, visit, PGW observed three gas appliances at the service address: a 100,000 BTU heater, a 65,000 BTU range and a 36,000 BTU water heater which were all operational. Tr. 39; PGW Ex. 3.

13. The theft period was calculated to be October 5, 2022 (the day after the gas was turned off) to November 17, 2023 (the day the meter was removed). Tr. 49; PGW Ex 1.

14. The theft calculation was based on the historical usage at the property from October 2018 to September 2019. Tr. 49-50; PGW Ex. 6.

15. The total bill for the theft period is \$2,448.83. Tr. 50; PGW Ex. 6.

16. The lease for the service property provided Complainant the right to enter the property to do inspections and check for safety or maintenance problems. Tr. 22; Comp. Ex. 3; PGW Ex. 7.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (Opinion and Order entered Feb. 8, 1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (Opinion and Order entered Oct. 6, 1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). 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.

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.*, 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Pa. Dep't of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also, Burlison v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982).

#### Responsibility for Unauthorized Use

Complainant has challenged his responsibility for unauthorized usage charges at the service address. Mr. Hicks does not argue that there was no meter tampering or theft at the property.

The Commission has held that a property owner having dominion and control over a service address is responsible for knowing, or should know, of tampering and theft of service occurring at the property. *Simmons v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Opinion and Order entered July 12, 2018) (*Simmons*).

The record shows that Complainant purchased the service address on November 14, 2012. Tr. 20-21; PGW Ex. 5. Mr. Hicks then rented the property to a tenant from April 1 2022 through some time after an October 11, 2023, writ of possession. Tr. 18; Compl. Exs. 2, 3, 4; PGW Ex. 7.

Since he purchased the property in 2012 and still owns the property, Mr. Hicks had dominion and control over the property at all times relevant to this case. Tr. 20-21; PGW Ex. 5. The Complainant was responsible for ensuring that theft of PGW's service did not occur at the service address. The lease for the service property clearly provided Complainant the right to enter the property to do inspections and check for safety or maintenance problems. Tr. 22;

Comp. Ex. 3; PGW Ex. 7. By leasing the property, Complainant did not relinquish his dominion and control over the property.

How the financial responsibility for utility services is divided between a landlord and a tenant in a lease is a private contract matter. *Scott v. Phila. Gas Works*, Docket No. F-2018-3001138 (Final Order entered Dec. 28, 2018) (citing *Andrews v. PECO Energy Co.*, Docket No. C-2012-2283978 (Final Order entered Jan. 25, 2013)). The Complainant is free to pursue any remedies available to him in his county or magisterial district court for any alleged breach of contract between he and his tenant. 66 Pa.C.S. § 103.

The Complainant has failed to demonstrate that PGW is incorrectly holding him responsible for the unauthorized usage charges that accrued at the service address or that PGW violated the Public Utility Code, a Commission regulation, or a Commission Order. Since the Complainant was unable to meet his burden in this matter, his Complaint is denied.

#### Unauthorized Use Charges Calculation

From the testimony, concerns arose regarding the reasonableness of the calculation of the theft charges. Section 1501 of the Code, provides, in pertinent part, that 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.” 66 Pa.C.S. § 1501. 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. 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. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995).

Pursuant to the Philadelphia Gas Works Gas Service Tariff PA. P.U.C. No. 2 at §

8.3:

In the event of the Company's meters or other property being tampered or interfered with, the Customer being supplied through such equipment *shall pay the amount which the Company may estimate is due for service used* even if such usage is not registered on the Company's meter, and for any repairs or replacements required, as well as for costs of inspections, investigations, damages and protective equipment and installations prior to reconnection.

Supplement No. 21, PGW Gas Service Tariff – Pa. P.U.C. No. 2, First Revised Page No. 44 (emphasis added).

The question then becomes: what is the reasonable way for PGW to estimate the unauthorized use charges? Here, the theft calculation was based on the historical usage at the property from October 2018 to September 2019. Tr. 49-50; PGW Ex. 6. This usage is approximately three years prior to the tenant moving into the property. PGW's witness testified that they used these months because they did not have a more recent 12-month period of uninterrupted usage. Tr. 59.

The Commission has often allowed a utility to use historical data to support estimated billings of accounts. *See Graham v. Phila. Gas Works*, Docket No. F-2023-3043482 (Final Order entered July 9, 2024). Use of historical data is permitted in certain situations because, generally speaking, absent some intervening event or cause to the contrary, usage cycles tend to trend at about the same rate from one year to the next. However, this case is unusual because the time period of the historical data is not from the prior year or even two years prior. Instead, the proposed historical data PGW wants to apply in this case is from a time period so far removed from the unauthorized usage, that it becomes speculative at best. In addition, there is no testimony as to why a historical usage calculation was used instead of basing the calculation on the BTUs of the appliances at the property over the applicable months.

Therefore, under the circumstances of this case, there is not enough evidence to conclude PGW's calculation of the unauthorized use charges was either reasonable or unreasonable. Accordingly, the Complaint must be dismissed. However, to ensure the calculation of unauthorized charges was reasonable under 66 Pa.C.S § 1501, in the ordering paragraphs below, I will require PGW to calculate the unauthorized use charges based on the BTUs of the appliances over the applicable months. If the estimated charges are lower using the BTU calculation, PGW shall adjust the charges accordingly and provide Mr. Hicks with a new bill based on those estimated charges.

### CONCLUSIONS OF LAW

1. This Commission has jurisdiction over the parties to and subject matter of this case. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is upon the Complainant. 66 Pa.C.S. § 332(a).

3. A property owner having dominion and control over a service address is responsible for knowing, or should know, of tampering and theft of service occurring at the property. *Simmons v. UGI Utils., Inc.*, Docket No. C-2017-2605783 (Opinion and Order entered July 12, 2018).

4. A lease between a property owner and a tenant addressing the financial responsibility for utility services is a private contact. *Scott v. Phila. Gas Works*, Docket No. F-2018-3001138 (Final Order entered Dec. 28, 2018) (citing *Andrews v. PECO Energy Co.*, Docket No. C-2012-2283978 (Final Order entered Jan. 25, 2013))

5. 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.” 66 Pa.C.S. § 1501.

6. The Complainant has failed to carry his burden of proving that Philadelphia Gas Works violated the Public Utility Code, a Commission regulation, or a Commission Order by holding him liable for the unauthorized use charges. 66 Pa.C.S. §§ 332(a), 701.

### ORDER

THEREFORE,

IT IS ORDERED:

1. The Philadelphia Gas Works’ supplemental exhibits are admitted.
2. That the Formal Complaint filed by Jamal Hicks in Jamal Hicks v. Philadelphia Gas Works at Docket No. F-2024-3045789 is dismissed.
3. That, within fifteen (15) days of the Final Order of the Commission, Philadelphia Gas Works shall recalculate the unauthorized use charges using the BTUs of the appliances over the months that the unauthorized use occurred. If the charges calculated are lower than the charges calculated using historical usage, Philadelphia Gas Works shall adjust the charges accordingly and provide Jamal Hicks with a new bill based on the new estimated charges.

4. That Docket No. F-2024-3045789 be marked closed.

Date: August 1, 2024

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/s/  
Michael J. Mroczka  
Special Agent