

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jared Everett

v.

Philadelphia Gas Works

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F-2024-3049467

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision denies the Formal Complaint of Jared Everett because he failed to sustain his burden of proof to establish that Philadelphia Gas Works wrongfully assessed him theft of service charges in order to restore gas service.

HISTORY OF THE PROCEEDING

On May 30, 2024, Jared Everett (Complainant or Mr. Everett) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In the Complaint, the Complainant alleged that he was incorrectly charged with gas service to 2209 McClellan Street, Philadelphia, PA (Service Address), from October 24, 2016 to February 12, 2024, in the amount of \$8,538.03. The Complainant further alleged that service has not been in his

name at the Service Address since April 27, 2010. The Complainant requested that gas service to the Service Address be restored without the \$8,538.03 charge.

This matter is the timely appeal of a decision from the Bureau of Consumer Services (BCS) dated April 30, 2024, at BCS Case No. 3977492, which dismissed the informal complaint of the Complainant. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On June 27, 2024, PGW filed an Answer to the Complaint. In its Answer, PGW admitted, in part, and denied, in part, various material allegations of the Complaint. PGW admitted that it issued a shut off notice for the gas service at the Service Address. PGW asserted that: the Complainant has been the owner of the Service Address since May 27, 2005; on October 24, 2016, PGW terminated the gas service to the Service Address due to non-payment; on February 12, 2024, PGW visited the Service Address and found the gas on and left the gas off; on March 11, 2024, PGW abandoned the gas service to the Service Address; on April 1, 2024, the Complainant contacted PGW to reestablish gas service to the Service Address; on April 3, 2024, PGW visited the property and found evidence of theft of gas service and left the gas off; and PGW subsequently held the Complainant responsible for unauthorized usage charges at the Service Address. PGW requested that the Complaint be denied.

By Hearing Notice dated August 28, 2024, an Initial Call-In Telephonic Hearing was scheduled for October 17, 2024.

A Prehearing Order was issued on September 27, 2024, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On October 11, 2024, PGW filed a Motion for Continuance due to witness unavailability.

By Hearing Cancellation/Reschedule Notice dated October 16, 2024, PGW's continuance request was granted and the Initial Call-In Telephonic Hearing was rescheduled for November 20, 2024.

The hearing convened as scheduled on November 20, 2024. The Complainant appeared *pro se* and testified on his own behalf. The Respondent appeared and was represented by Graciela Christlieb, Esquire, who presented the testimony of Albert Peti, General Supervisor of Revenue Protection at PGW, and Patricia Bernard, a Customer Review Officer at PGW. The Respondent submitted ten exhibits, all of which were admitted into the record (PGW Exhs. 1-10).

The record consists of a 34-page transcript and ten exhibits. The record closed on December 10, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Jared Everett.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant currently resides at 1629 South 23rd Street, Philadelphia, PA 19145. Tr. 6.
4. The Complainant is the sole owner of 2209 McClellan Street, Philadelphia, PA (Service Address) since 2005. Tr. 6-7; PGW Exhs. 8-9.

5. On October 24, 2016, PGW shut off gas service to the Service Address at the curb valve for nonpayment. Tr. 13-14; PGW Exh. 1.

6. On February 12, 2024, a PGW technician conducted a curb valve safety recheck at the Service Address and found the gas on. Tr. 15; PGW Exh. 2.

7. Also on February 12, 2024, the PGW technician shut the gas off at the curb and installed a locking device called an “Expander.” Tr. 15-16; PGW Exh. 2.

8. On March 11, 2024, PGW abandoned gas service to the Service Address by disconnecting service from the main. Tr. 16; PGW Exh. 3.

9. On April 1, 2024, the Complainant contacted PGW and requested restoration of gas service to the Service Address. Tr. 17; PGW Exh. 4.

10. Pursuant to the Complainant’s request to restore service, PGW made an appointment to visit the Service Address and perform a safety check. Tr. 17; PGW Exh. 5.

11. On April 3, 2024, a PGW technician visited the Service Address and found an unknown meter bypass and obtained a fuel line reading of 6% LEL (Lower Explosive Limit). Tr. 18-21; PGW Exhs. 5-6.

12. The PGW technician removed the meter and installed multiple locking devices. Tr. 18-20; PGW Exh. 5.

13. The PGW technician found the following gas-consuming appliances connected to the fuel line:

- House Heater – 60,000 BTUs
- Water Heater – 36,000 BTUs

- Gas Range – 56,000 BTUs
- Gas Dryer – 22,000 BTUs

Tr. 21; PGW Exh. 6.

14. PGW calculated the Complainant's unbilled usage in the amount of \$8,538.03 based on the BTUs of the appliances found at the Service Address and historical weather data for the timeframe from October 25, 2016 through February 12, 2024. Tr. 26-27; PGW Exh. 7.

15. The Complainant does not dispute that theft of service occurred at the Service Address. Tr. 8.

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).

In this case, the Complainant does not dispute that there was unauthorized usage of gas at the Service Address, nor that he is the owner of the Service Address. The Complainant's position is that he should not be held responsible for the unauthorized usage because he was not residing at the Service Address and was not aware of the unauthorized usage.

The Commission has found that a property owner having dominion and control over a service address is responsible to have known, or should have known, 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). Thus, as the owner of the Service Address, the Complainant was responsible for ensuring that theft of

PGW's gas service did not occur at the Service Address and his failure to do so leaves him responsible for the costs of the unauthorized usage. Simply claiming that he was not aware of the unauthorized usage does not relieve him of this responsibility. PGW has not acted inappropriately by billing him for this unauthorized usage.

PGW calculated the Complainant's unbilled usage in the amount of \$8,538.03 based on the BTUs of the appliances found at the Service Address and historical weather data for the timeframe from October 25, 2016 through February 12, 2024.

Based on the foregoing, I find the Complainant failed to sustain his burden of proof that PGW wrongfully assessed him for theft of service charges in the amount of \$8,538.03 in order to restore gas service. Accordingly, the Complaint is denied.

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 decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.
4. "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).

5. A property owner having dominion and control over a service address is responsible to have known, or should have known, 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).

6. The Complainant failed to meet his burden of establishing that the Respondent erred in billing him for unbilled usage at the Service Address from October 25, 2016 through February 12, 2024, in the amount of \$8,538.03. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Jared Everett at *Jared Everett v. Philadelphia Gas Works*, Docket No. F-2024-3049467, is denied.

2. That Docket No. F-2024-3049467 be marked closed.

Date: March 7, 2025

/s/
F. Joseph Brady
Administrative Law Judge