



**Philadelphia Gas Works**

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August 31, 2009

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
Room B-20, North Office Building  
Harrisburg, PA 17105-3265

**Re: Cars R Us c/o Holman Copeland v. PGW, Docket No. C – 2008 – 2033437**

Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.553(d), the Philadelphia Gas Works ("PGW") hereby files the original and nine (9) copies of its Reply to Complainant's Exceptions and the Petition to Reopen the Record for the Purposes of Taking Additional Information in the above captioned matter.

If additional information is required, please do not hesitate to contact the undersigned. Thank you for your assistance in the matter.

Sincerely,

  
Kristine Trock

Enclosure

cc: Mr. Holman Copeland (Regular Mail)  
Anne Marie Cromley (PGW Mail)  
Linda Pereira (PGW Mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Cars R Us c/o Holman Copeland** :  
 :  
 **v.** : **Docket No. C – 2008 – 2033437**  
 :  
 **Philadelphia Gas Works** :

**PHILADELPHIA GAS WORKS'  
REPLY TO COMPLAINANT'S EXCEPTIONS  
AND THE PETITION TO REOPEN THE RECORD  
FOR THE PURPOSES OF TAKING ADDITIONAL EVIDENCE**

Pursuant to 52 Pa. Code §5.535, and the Secretary's letter dated August 7, 2009, in the above captioned matter, the Philadelphia Gas Works, ("PGW") hereby files an original and nine (9) copies of its reply to the Complainant's exceptions to the June 11, 2009 Initial Decision (Initial Decision) filed on August 21, 2009 and reply to the Complainant's request to reopen the record for the purpose of taking additional documentary evidence in the nature of a petition filed under 52 Pa. Code §5.571.

**I. INTRODUCTION**

In this matter, the Complainant disputes the PGW charges of \$4,137.03 for unauthorized usage after finding an operational bypass providing gas to the Complainant's body shop business located at 3201 Stockley Street, Philadelphia, Pennsylvania (Service Address).<sup>1</sup> The operational bypass was located in one room of the building at 2781 Roberts Avenue, Philadelphia, Pennsylvania (now owned by Southern Graphic Systems).<sup>2</sup> Previously, the Service Address and the several buildings adjacent to the Service Address, including 2781 Roberts Avenue, had been owed by one entity with all utility metering located in a room in 2781 Roberts Avenue.<sup>3</sup> PGW terminated the gas service to the Service Address at the previous owner's request on September 30, 2002.<sup>4</sup>

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<sup>1</sup> Tr. p. 4

<sup>2</sup> Initial Decision, Findings of Fact 2, p. 2

<sup>3</sup> Initial Decision, p. 5

<sup>4</sup> Initial Decision, p. 5

On June 20, 2007, PGW responded to a gas leak call around the loading docks of 2781 Roberts Avenue. After repairing the leak, PGW found that a bypass to PGW Meter No. 201287 was opened and allowed gas to flow to the Service Address.<sup>5</sup> Since the facility is commercial in nature, it has a commercial gas service apparatus. The metering apparatus is set up with a redundancy (valve) that allows gas to flow, bypassing the meter without interruption of service to the business, if PGW is required to perform work on the meter.<sup>6</sup>

When PGW terminated gas service to the facility in September 30, 2002, it locked the apparatus with a “cowbell” shaped lock to prevent unauthorized gas usage. On June 21, 2007, PGW found this valve turned on and the lock sitting loosely on top of the apparatus. Record evidence shows that someone other than PGW removed the cowbell lock and turned the gas service on to supply gas to the heaters at CARS “R” US.<sup>7</sup>

On June 21, 2007, a PGW serviceperson (PGW Witness, Wayne Carroll) with a person from Southern Graphic Systems traced the fuel line through the Southern Graphic Systems building, which leads to the party wall of the Complainant’s body shop business, where he could trace no further. The PGW serviceperson Wayne Carroll walked around the block to the front entrance of the Complainant’s business, announcing that he was from PGW and was tracing a fuel line.<sup>8</sup> He noticed two (2) big heater units, but he did not get an opportunity to investigate further because the Complainant, Mr. Copeland, rather adamantly, asked him to leave his property.<sup>9</sup>

On June 21, 2007, the PGW serviceperson, Carroll terminated the unauthorized gas service to the Service Address by removing the meter.<sup>10</sup>

On September 21, 2007, three months after the termination of unauthorized usage, the Complainant contacted PGW to install gas service to the Service Address. PGW calculated the cost of the new service to be \$40,212, as the Complainant could no longer use, metering and piping apparatus that PGW had traced through the Southern

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<sup>5</sup> Initial Decision, Findings of Fact 7, p. 3

<sup>6</sup> PGW EX. 9, p. 2

<sup>7</sup> Id.

<sup>8</sup> PGW Ex. 9, p. 3 and Tr. pp. 53 – 55

<sup>9</sup> Tr. p. 54

<sup>10</sup> Initial Decision, Findings of Fact 5, p. 3

Graphic Systems building as it traversed Southern Graphic Systems property. PGW must route the Complainant's new gas service from mains located in the street closer to the Complainant's building, going directly into the Service Address without traversing property owned by another.<sup>11</sup> Originally, the Complainant filed the formal complaint disputing the both the unauthorized usage and the cost to establish new service.

An Initial Hearing was held on March 30, 2009. The Complainant eliminated the issue of the cost of the establishment of new service from the Complaint, leaving the unauthorized usage as the remaining issue. On April 1, 2009, the Administrative Law Judge requested that PGW clarify the record with the provision of additional technical information from PGW witnesses. On April 15, 2009, PGW submitted the additional information, which was marked as PGW Exhibit 9 and admitted into the records without objection. The record was closed on April 15, 2009.

The Commission issued the Initial Decision on June 11, 2009 ("Initial Decision"). The Initial Decision dismissed the Complaint finding that it is more likely than not that the Complainant used the gas when it was available and that the Complainant used the gas calculated at \$4,137.03.<sup>12</sup>

On July 22, 2009, the Complainant filed a document in the nature of a request for an extension in time to file exceptions to the Initial Decision in the matter and a statement (exception) that the Complainant never had gas in the building. By letter dated July 23, 2009, the Commission instructed PGW to provide a response within 10 days. PGW opposed the extension of time requested. By the Secretary's letter dated August 7, 2009, the Commission granted the Complainant's request for an extension in time to file exceptions. The Commission extended the time to file exceptions to August 21, 2009. On August 21, 2009, the Complainant filed exceptions and a request in the nature of a petition to reopen the record of this proceeding.<sup>13</sup> The Complainant proffers six (6) pages of additional documentary evidence. These include two (2) City of Philadelphia, Department of Licenses and Inspections, Violation Notices, dated

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<sup>11</sup> Tr. pp. 58 - 64

<sup>12</sup> Initial Decision, p. 6

<sup>13</sup> The Complainant's request is in the nature of a petition to reopen the record prior to a Commission final decision pursuant to 52 Pa. Code §5.571. Also, as of this writing, PGW has not been served with the Complainant's filing of August 21, 2009, even though the Complainant's filing contains a Certificate of Service. PGW obtained a copy of the filing from the Commission.

November 21, 2007 and September 5, 2008, respectively. Also included are copies of receipts for the purchases of kerosene, both occurring on October 29, 2007.<sup>14</sup> This reply follows.

**II. Reply – Request to Reopen Record to Admit Proffered Documents**

**A. The Complainant Mischaracterizes The Reason For His Failure To Include The Documents In His Testimony At The Initial Hearing.**

The Complainant's August 21, 2009 Exceptions, state that he should have the opportunity to provide additional supporting evidence that was unavailable at the time of the hearing due to the unexpected absence of the Complainant's attorney, George Gossett, Jr., Esq.<sup>15</sup> The Complainant states that Mr. Gossett failed to appear at the March 30, 2009 hearing. The Complainant misrepresents the reason for Mr. Gossett's "unexpected" absence from the Initial Hearing in order to justify his late submission of the additional evidence.<sup>16</sup>

On or about August 26, 2009, I spoke with Mr. Gossett concerning his representation of the Complainant. He informed me that he does represent the Complainant on other matters but was of the understanding that he would not represent the Complainant before the Commission in the instant matter. He and the Complainant agreed well in advance of the March 30, 2009 hearing that he would not be the Complainant's counsel in the instant matter. This is consistent with the fact that Mr. Gossett has not entered his appearance on this matter with the Secretary of the Commission. While the Complainant may not have had the additional documentary evidence on the date of the Initial Hearing, it was not due to the "unexpected" absence of Mr. Gossett.

**B. The Proffered Documents Are Irrelevant To The Period Of Gas Usage In Dispute.**

The Complainant states in the August 21, 2009 Exceptions that he never used gas and but rather he used kerosene heaters.<sup>17</sup> These exceptions further purport that

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<sup>14</sup> Complainant's Exceptions, filed August 21, 2009 Attachments

<sup>15</sup> George Gossett, Jr., Esq.; 21 S. 12<sup>th</sup> Street, Suite 100; Philadelphia, PA 19107; 215-568-2001

<sup>16</sup> Complainant's Exceptions, filed August 21, p. 1

<sup>17</sup> Id.

the attachments to the exceptions contain copies of violation notices from November 2006 through September 2008.

The Complainant misrepresents the period covered by the attached notices. Even a casual perusal of the violation notices show that the Violation Notices are dated November 21, 2007 and September 5, 2008, respectively. Also included are copies of receipts for the purchases of kerosene, both occurred on October 29, 2007. These represent the Complainant's use of kerosene beginning November 2007 and not November 2006, as stated in the body of the exceptions. The record evidence shows that on June 21, 2007, PGW terminated the unauthorized gas service to the Service Address. The exception fails to show any use of kerosene during the period of unauthorized gas usage, pre-June 21, 2007. It follows that after PGW terminated the unauthorized gas use in the summer of 2007, the Complainant began using kerosene to heat the facility in the fall 2007. Without the proof of the earlier use of kerosene, the exceptions merely restate the bald assertion that the Complainant did not use gas at the Service Address. The proffered documents are irrelevant to the period of gas usage in dispute as the documents refer to use of kerosene after the termination of unauthorized gas use.

Finally, no public interest is served by re-opening the record of this proceeding for the admission of the proffered documents, as the proffered documents do not address the use of alternative fuel (kerosene) prior to the termination of the unauthorized gas use.

The Complainant has failed to meet the burden of proof. The Initial Decision is replete with record evidence that more than substantially supporting the finding that it is more likely than not that, the Complainant used the gas when it was available and that the Complainant used the gas estimated to be at \$4,137.03.

### **III. REPLY – To Exceptions**

The Complainant's exceptions fail to point to any error in fact or law contained in the Initial Decision. The exceptions point out that PGW created the bypass through which the unauthorized gas use occurred. The record of this proceeding includes evidence on the nature of the bypass. Since the Service Address is a commercial

facility, the metering apparatus is set up with a redundancy (valve) that allows gas to flow, bypassing the meter without interruption of service to the business, if service work is required on the meter. When PGW terminated gas service to the facility in September 30, 2002, it locked the apparatus with a “cowbell” shaped lock to prevent unauthorized gas usage. On June 21, 2007, PGW found this valve turned on and the lock sitting loosely on top of the apparatus. Record evidence shows that someone other than PGW removed the cowbell lock and turned the gas service on to supply gas to the heaters at CARS “R” US.<sup>18</sup>

The Complainant’s exceptions also points out that the bypass was not inside the Service Address. The record evidence shows that on June 21, 2007, a PGW serviceperson (PGW Witness, Wayne Carroll) traced the fuel line through the Southern Graphic Systems building, which leads to the party wall of the Complainant’s body shop business, where he could trace no further. The PGW serviceperson Wayne Carroll walked around the block to the front entrance of the Complainant’s business, announcing that he was from PGW and was tracing a fuel line.<sup>19</sup> He noticed two (2) big heater units, but he did not get an opportunity to investigate further because the Complainant, Mr. Copeland, rather adamantly, asked him to leave his property.

Finally, the Complainant’s exception states that he refused PGW access to his property on June 21, 2007 because, the Service Address is located in a tough neighborhood.” Even if the Complainant felt threatened by PGW serviceperson Wayne Carroll, who traced the piping, the Complainant could have asked for proper identification before adamantly asking him to leave the property.

The Complainant’s exceptions fail to point to any error in fact or law contained in the Initial Decision. The Exception merely restates the bald assertion that he did not use gas at the Service Address. The Complainant had failed to meet the burden of proof. The Initial Decision is replete with record evidence that more than substantially supporting the finding that it is more likely than not, that the Complainant used the gas when it was available and that the Complainant used the gas estimated to be at \$4,137.03.

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<sup>18</sup> PGW Ex. 9, p. 3 and Tr. pp. 53 – 55

<sup>19</sup> Id.

**IV. CONCLUSION**

For the reasons stated above, the Commission should deny the Complainant's request to re-open the record of this proceeding to admit the proffered documents and deny the Complainants exceptions to the Initial Decision.

Respectfully submitted,

August 31, 2009



Laureto A. Farinas, Esq.  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
Philadelphia, PA 19122


**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

**Mr. Holman Copeland  
Cars R Us Collision  
3001 Stokley Street  
Philadelphia, PA 19129**

August 31, 2009

  
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Laureto A. Farinas, Esq.  
Philadelphia Gas Works  
800 W. Montgomery Avenue  
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