

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Oneil J. Allen, Sr.

v.

Philadelphia Gas Works

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Docket No. C – 2009 – 2095419

**EXCEPTIONS OF THE
PHILADELPHIA GAS WORKS TO THE INITIAL DECISION**

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works (PGW) hereby files its Exceptions to the Initial Decision dated August 21, 2009, in the above captioned matter.

I. Introduction

This matter involves the allegation of gas service to the Complainant's address, 1734 N. Marshall Street, Philadelphia, Pennsylvania (Service Address). The Complainant maintains that the PGW over-billed him for gas service in the winter heating season.¹ To the Complaint, PGW answered timely, stating that PGW based the Complainant's gas bills during the most recent winter heating season upon actual meter readings and reflected the actual gas usage at the Service Address for that period.²

On June 9, 2009, Administrative Law Judge Ky Van Nguyen, convened an Initial Hearing of this matter. The Complainant testified on his own behalf and present no exhibits into evidence. PGW testimony was given by Anne Marie Cromley, Senior Customer Review Officer. PGW introduced two exhibits into evidence presenting the Complainant's historical usage. The Complainant's testimony focused, *inter alia*, on the largely unchanged nature of the factors affecting gas usage .

On August 21, 2009, the Commission issued an Initial Decision in this matter (Initial Decision). The Initial Decision sustained the Complaint in part, finding, *inter alia*, that the Complainant had in part carried his burden of proof. The Initial Decision found that the Complainant's gas consumption for the month of February 2009 9.13 ccf a day and that the amount PGW originally billed was abnormally high when compared with

¹ The Complaint, Paraph 4

² The Answer, Paragraph 4

average previous bills in comparable months.³ The Initial Decision ordered PGW to re-compute the Complainant's February 2009 bill based upon the 9.13 ccf a day consumption level, applying the appropriate tariff rates and credit or refund the amount of overcharge to the Complainant's account.⁴

These exceptions follow.

II. Exceptions

A. The Initial Decision Errs in Ignoring Relevant Weather Evidence That Accounts for the Increase in the Complainant's Gas Bill for February 2009.

The Initial Decision bases its finding that the Complainant had met his burden of proof in showing that the amount PGW originally billed was abnormally high when compared with average previous bills in comparable months.⁵ From the account information provided in PGW Exhibit – 4, the Complainant's gas consumption for his February PGW bill is consistent with the gas consumption and heating degree day weather information for the months of February 2008, 2007 and 2006. As shown in PGW Exhibit – 1, the Complainant's gas bills and usage for these periods are as follows⁶:

February	Usage	Degree Days ⁷	Billing Amount
2/4/2009	348 ccf	1027	\$636.85
2/5/2008	291 ccf	856	\$529.29
2/7/2007	307 ccf	926	\$562.51
2/6/2006	243 ccf	698	\$516.98

In reviewing the Complainant's gas consumption in February of previous years, the approximately \$100 increase over the previous months is attributable to the occurrence of colder weather. February 2009 was a colder period in that there were 1027 Degree days measured for that month.

³ Initial Decision, p. 5 Conclusions of Law, Paragraphs 2 and 3

⁴; Id. Ordering Paragraphs

⁵ Id. p. 5 Conclusions of Law, Paragraphs 3

⁶ Information contained in PGW Exhibit 1

⁷ The Answer, Exhibit A, Degree Day – an index of energy consumption for heating. It indicated the number of degrees the average temperature drops below 65° F in a given period.

In this matter, the Complainant bears the burden of proof, as the party seeking relief from the Commission.⁸ To satisfy that burden, the Complainant must show that the utility is responsible or accountable for the problem described in the Complaint.⁹ The Complainant must establish a fact by a preponderance of the evidence. While this may be established though the presentation of more convincing evidence that the other party, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.¹⁰

Pursuant to the Commission's decision in Waldron v. Philadelphia Electric Company, once the Complainant has established a *prima facie* case in a high bill complaint, by showing that [1] the number of occupants of the household has not changed, [2] the potential for energy utilization is low; and, [3] the prior billing history shows no previous abnormalities, the burden of going forward shifts to the utility to rebut the *prima facie* case with evidence which is at least co-equal.¹¹ The Commission's decision in Poorbaugh v. West Penn Power Company, provides further direction. If the utility rebuts the Complainant's evidence then the burden of going forward shifts back to the Complainant.¹² Irrespective of whether the burden of going forward has shifted to either party, the ultimate burden of proof never shifts but rather remains with the Complainant.¹³ The Initial Decision, after finding that the Complainant has established a *prima facie* case shifts the burden going forward to PGW; the Initial Decision ignores record evidence that directly rebuts the Complainant's testimony.

After the Complainant gave testimony in support of her *prima facie* case in this matter, PGW responded with sound evidence that was as least co-equal to the Complainant's testimony. PGW's evidence rebutted the Complainant's assertion that the make up bill is inaccurate.

IV. CONCLUSION

⁸ 66 Pa. C.S. §332(a)

⁹ Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990)

¹⁰ Norfolk and Western Ry. v. PA Public Utility Commission, 413 A.2d 1037 (1980)

¹¹ Waldron v. Philadelphia Electric Company 54 Pa. PUC 98 (1990)

¹² Poorbaugh v. West Penn Power Company 1994 Pa. PUC Lexis 95

¹³ Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528 (1980)

For the foregoing reasons, PGW respectfully requests that the Commission dismiss the Complaint.

Respectfully submitted,

September 10, 2009



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

CERTIFICATE OF SERVICE

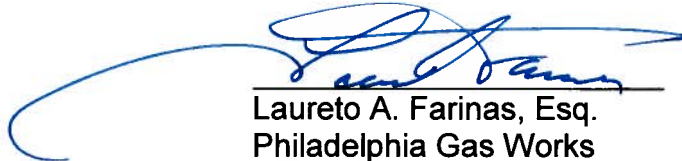
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Oneil J. Allen, Sr.
1734 N. Marshall Street
Philadelphia, PA 19122

September 10, 2009



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