

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held April 15, 2004

Commissioners Present:

Terrance J. Fitzpatrick., Chairman
Robert K. Bloom, Vice Chairman
Glen R Thomas
Kim Pizzingrilli
Wendell F. Holland

Roderick Berry

F-01184412

v.

DOCUMENT

Philadelphia Gas Works

OPINION AND ORDER

DOCKETED

APR 29 2004

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions of the Philadelphia Gas Works (Respondent) filed on January 20, 2004, to the Initial Decision of Administrative Law Judge (ALJ) Allison K. Turner that was issued on December 30, 2003. Roderick Berry (Complainant) did not file Reply Exceptions.

History of the Proceeding

On October 4, 2002, the Complainant filed a Formal Complaint against the Respondent wherein he alleged that the Respondent changed his meter in the summer of 2002 and afterwards sent him a bill for over \$4,900.00. The Complainant averred that the Respondent claimed the bill was issued due to undercharges for service provided between

his last meter reading and the meter changeover. According to the Complainant, one representative of the Respondent said his last meter reading was in 1996, but another one said it was in 1992. The Complainant maintained that he has paid his monthly bill on time.

The instant Complaint is an appeal of a Decision of the Commission's Bureau of Consumer Services (BCS), which was issued on August 21, 2002, on an informal complaint filed by Complainant. That Decision was issued at Case No. 118412 and directed the Complainant to pay budget bills of \$190.00 to the Respondent, plus \$40.00 per month toward the arrearage determined to be \$4,553.67. The Decision also required the Respondent to credit the Complainant's account in the amount of \$973.00, and to waive all late payment charges from June 20, 2002.

BCS found that the Complainant was entitled to a \$973.00 credit to his account because the Respondent had failed to obtain actual meter readings. BCS concluded that the Complainant was unable to judiciously manage his gas consumption and exercise conservation methods due to the Respondent's failure to obtain actual meter readings. On that basis, BCS determined that a credit in the amount of \$973.00 should be applied to the bill. (Respondent Exhibit B).

On November 6, 2002, the Respondent filed its Answer to the Complaint, wherein it denied the averments as to the error in billing. The Respondent admitted that it gave the Complainant a bill for previously unbilled services in the amount of \$4,864.21 after a meter change on May 20, 2002. The Respondent averred that the bill was for the time period June 23, 1997 to May 20, 2002. The Respondent also averred that the Complainant was billed at the lower rates that were in effect during that period.

On April 11, 2003, a hearing was held before ALJ Turner. The Complainant participated *pro se* and the Respondent was represented by counsel. On December 30, 2003, the ALJ issued her Initial Decision which determined that the Respondent violated the Public Utility Code and the Commission's regulations by failing to read the Complainant's meter in accordance with its tariff and this Commission's Regulations. The ALJ further found that the Respondent did not adequately support either its usage study for the Complainant or its calculations for the make-up bill issued to the Complainant. The ALJ directed that the Respondent waive any late charges on the account and credit the Complainant's account in the amount of the make-up bill. The Respondent filed its Exceptions on January 20, 2004.

Discussion

As a preliminary matter, we note that any issue or Exception that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pennsylvania Public Utility Commission*, 625 A.2d 741 (Pa. Cmwlth. Ct. 1993); *see also, generally, University of Pennsylvania v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. Ct. 1984).

The ALJ made eleven Findings of Fact and reached twelve Conclusions of Law. The ALJ's Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless either expressly or by necessary implication they are rejected or modified by this Opinion and Order.

The ALJ stated that the central controversy in this matter was the Complainant's allegation that the Respondent read his meter only three times in the

ten year period from 1992 until 2002. On three other occasions, the Complainant provided the meter reads. The ALJ noted that the Respondent conceded that its billings during the ten year period (1992-2002) were based upon system estimates. (I.D. at 6).

The ALJ found that the Respondent did not read the Complainant's meter for a number of years, that the Respondent's estimated bills during this period failed to accurately estimate usage and that this was only discovered when a new meter with an Automatic Meter Reader (AMR) device was installed. The Respondent asserted that its last meter reading before the AMR installation and the new meter readings are accurate. The Respondent has rebilled the Complainant for what it claims is the correct amount based upon the new consumption information determined by comparing these two readings. (I.D. at 12).

The ALJ also found that the Respondent failed to establish that the calculations resulting in the make-up bill amount were correct. The ALJ stated that the Respondent failed to explain the calculation of its make-up bill in sufficient detail to permit a finding regarding its accuracy. Accordingly, the ALJ held that the entire make-up bill should be credited to the Complainant's account and any late payment penalties should be waived. (I.D. at 14).

In its Exceptions, the Respondent stated that the ALJ erred in concluding that its calculations for the rebilling were unreliable. The Respondent argued that its usage factor of 39.4 cubic feet per degree day is in line with the other periods of compared usage. The Respondent also asserts that it did not include the "back-up" of its pre-1997 meter readings because "it was not part of the disputed period." (Exceptions at 3). The Respondent further asserts that its witness was prepared to provide additional verification of her analysis of the make-up bill, but such verification "was not requested." (*Id.*).

There is no question that the Respondent has violated its Tariff and this Commission's Regulations at 52 Pa. Code § 56.12 (to the extent consistent with Respondent's Tariff) relating to the requirement to conduct meter reads on a periodic basis.¹ The Respondent's Tariff, effective July 3, 2000, provides in pertinent part:

3.21 METER READING INTERVALS

* * *

- b. Meter readings for customers without automatic meter reading devices will be scheduled for three (3) of the four (4) months from December through March and bi-monthly thereafter.
- c. PGW shall use its best efforts to obtain an actual meter reading for Customers regularly, and at least every six (6) months for Customers without automatic meter reading devices. PGW shall make reasonable efforts to schedule its meter reading labor force in order to provide meter readings during evening hours and weekends.
- d. For those months in which a meter is not scheduled for a reading or in which a scheduled reading was not

¹ A provision of the Natural Gas Choice and Competition Act (66 Pa. C.S. § 2212(d)) and a Memorandum of Understanding between the Commission and Respondent dated July 18, 2000, provides that where Respondent's Tariff differs from the Commission's Regulations, Respondent's Tariff shall apply until such time as the Commission approves a restructuring plan for Respondent. Commission Regulations require utilities such as Respondent, which bill on a monthly basis, to read customer meters at least every other month, and to allow customers to read their own meters on the months the utility does not read them, and to report those readings to the utility on preaddressed postcards provided by the utility to the customer at the customer's request. See, 52 Pa. Code § 56.12(2). In this action, the Respondent's Tariff will apply to the extent there are differences between it and this Commission's Regulations.

obtained, PGW reserves the right to render appropriately marked ESTIMATED BILLS.

* * *

3.22 CUSTOMER READINGS

PGW will provide a telephone number which may be used by Customers, on a 24-hour basis, to report their meter readings. PGW will also provide, at the Customer's request, postage paid, pre-addressed postcards on which the Customer may note the reading of his/her meter. PGW will use the Customer's reading for billing purposes whenever said readings are appropriate. PGW may establish due dates by which postcards or telephone calls must be received in order for a bill to be based upon the meter reading of the Customer or occupant. If the reading of a Customer is not received by that due date, PGW will estimate the quantity of usage.

* * *

3.24 ESTIMATED BILLING

Estimated bills are to be paid in accordance with standard payment terms of this Tariff. They are subject to revision when the meter reading of the Customer's actual use, later secured, discloses any difference from the estimate.

Based upon our review, examination, and analysis of the record, we agree with the ALJ that the make up bill rendered by the Respondent has not been shown to be accurate on this record. We share the ALJ's view that the evidence proffered by the Respondent in this matter does not support the make up bill nor does it permit the calculation of an alternative figure. The ALJ also found that although the Respondent based its case on the fact that its estimated bills to the Complainant were inaccurately low and this was only discovered when the meter was changed, no test was made on the removed meter. (I.D. at 12).

The Complainant has challenged the accuracy of the Respondent's undercharge calculation. In the face of this challenge, the lack of any record evidence relating to the accuracy of the removed meter casts substantial question as to the resulting make-up bill amount. In addition, the ALJ gave no weight to the Respondent's usage analysis. (I.D. at 13). With such doubt in the record, it is possible that either the customer is being charged for gas that was not used or that the Respondent is not being paid for gas that actually was used. Of equal concern to the foregoing is the ALJ's discussion regarding the Respondent's evidence of the correct account balance. The ALJ found that the record contains several inconsistencies which render an accurate determination of the Complainant's account balance impossible. (*Id.*).

Our review of the record in this proceeding leads us to conclude that although the Respondent violated the Commission's Regulations and its own tariff, we cannot adopt the ALJ's conclusion to preclude a make-up billing. We find that the Complainant did purchase gas from the Respondent and that the Respondent is entitled to be paid for gas actually used. The totality of the record before us clearly establishes that there must be a recalculation of the Complainant's usage and billing account. However, we also find that the ALJ was correct that the state of the record in this matter is not adequate to support specific findings of the Complainant's usage and correct make-up bill amount, if any.

This proceeding presents facts similar to those presented in our Opinion and Order in *Lewis v. Philadelphia Gas Works*, F-01008205 (Order entered August 26, 2003). (*Lewis*) *Lewis* also involved a situation where the Respondent estimated bills for a longer period than permitted by its Tariff and our Regulations. The fact that the Complainant here challenges the accuracy of the Respondent's make-up bill as did the Complainant in *Lewis*, places this case in a posture similar to *Lewis*.

Here, as in *Lewis*, we arrive at the conclusion that the lack of a test of the removed meter raises substantial questions relating to the Complainant's gas consumption and the calculation of the Complainant's make-up amount for under billed service. Therefore, consistent with *Lewis*, we will refer this matter to the Commission's Office of Administrative Law Judge for mediation on the issue of the appropriate usage figure and make-up bill amount. As part of the mediation, the Respondent and Complainant should take into account all relevant factors in determining the approximate level of gas consumption for the period June 11, 1998 to June 11, 2002. We note the Respondent's argument in its Exceptions that it would have addressed the issues of accuracy of prior meter reads and its usage calculations had it been aware those issues were in dispute. The Respondent should now be fully aware that its position on those issues must be fully supported.

We also must address the appropriate period for the make-up bill, if any is found to be warranted. The ALJ found that pursuant to Section 3314(a) of the Code, 66 Pa. C.S. § 3314(a), the Commission's statute of limitations is three (3) years from the date at which liability arose. (I.D. at 5). However, that is not the proper time frame for make-up billing. In *Angie's Bar v. Duquesne Light Company*, 72 Pa. PUC 213, 1990 Pa. LEXUS 4 (1990), (*Angie's Bar*) we stated the following on the issue of make-up billing generally:

Section 1312 of the Public Utility Code permits ratepayers to seek rate refunds when certain findings are made, up to a four-year past period measured from the date that the improper billing was discovered. Parity and equity warrant that a utility should likewise be limited to a four-year past period for recoupment of under billings. . . . *Accordingly, we shall limit backbillings to a four-year period in cases where the customer has no culpability, and as such, Duquesne, in*

this proceeding, is permitted to backbill the Complainant for estimated unmetered usage for the period of April 10, 1982 to May 28, 1986.

72 Pa. PUC 217; 1990 Pa. PUC LEXIS 12-13. (Emphasis added). (Footnote omitted).

Prior Commission decisions provide for a four year period for make-up bills where the customer has not been involved with theft of service or other culpable acts leading to the under billing. The record clearly indicates that the Complainant is not responsible for the under billing here. Accordingly, we will limit the billing and usage inquiry on remand to the four-year period from June 11, 1998 to June 11, 2002. We reiterate that the state of the record at this point does not support a finding that a make-up bill is warranted in this instance. We also note that since any potential make-up bill would have been accrued over a four year period, any payback period warranted by the record should also be limited to four years.

This proceeding also raises a number of questions regarding the Respondent's over-all practices surrounding customer billing, meter reading and meter disposal that go beyond the scope of this specific proceeding. These issues include the Respondent's meter reading frequency, its use of estimated bills, the resulting high make-up bills, the accuracy of the make-up bills, the appropriate pay back period for make-up bills and this Commission's use of a twenty percent discount for all high make-up bills where there has been no meter reading for six or more months. Also included in these concerns is the Respondent's failure to test or to retain its older meters for any length of time after removal. This eliminates a customer's ability to challenge the accuracy of a meter that factored into the calculation of the high make-up bill. These over-all issues are of substantial concern. Similar to our action in *Lewis*, we shall refer these general issues to the Law Bureau for investigation and whatever further action or remedies are appropriate.

Conclusion


Based upon our review of the record as developed in this proceeding, including the Initial Decision and the Exceptions filed thereto, we shall modify the Initial Decision. The Respondent's Exceptions shall be granted, in part, and denied, in part, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions of the Philadelphia Gas Works are granted, in part, and denied, in part, consistent with the foregoing Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Allison K. Turner is modified consistent with this Opinion and Order.
3. That this proceeding is referred to the Office of Administrative Law Judge for mediation to determine the appropriate level of gas that was consumed during the period June 11, 1998, to June 11, 2002.

4. That the general issues discussed in this Opinion and Order shall be referred to the Law Bureau for investigation and whatever further action or remedies as may be appropriate.

BY THE COMMISSION,


James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 15, 2004

ORDER ENTERED: **APR 15 2004**