



Philadelphia Gas Works

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June 16, 2010

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

Re: **Digital 833 Chestnut, LLC v. PECO Energy Company, Philadelphia Gas Works and UGI Energy Services, Inc., Docket Nos. C-2008-2076235, C-2008-2076610 and C-2008-2076623**

Dear Secretary Chiavetta:

Enclosed for filing in the above captioned matter is the Prehearing Conference Memorandum of Philadelphia Gas Works. Copies of this document are being served per the attached certificate of service.

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

Sincerely,


Danielle Ross

Enclosure

cc: The Honorable Herbert Smolen
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Digital 833 Chestnut, LLC,	:	
Complainant	:	
v.	:	Docket No. C – 2008 – 2076610
	:	Docket No. C – 2008 – 2076235
PECO Energy Company,	:	Docket No. C – 2008 – 2076623
Philadelphia Gas Works,	:	
UGI Energy Service, Inc.,	:	
Respondents	:	

Prehearing Memorandum of Philadelphia Gas Works

In compliance with the Prehearing Conference Order dated May 25, 2010 of Administrative Law Judge Herbert Smolen in the above captioned matter, the Philadelphia Gas Works (“PGW”) hereby files this memorandum and states the following:

I. BACKGROUND

In this matter, the Complainant seeks relief in the form of reimbursement of funds paid to PGW for gas service. The Complainant filed a formal complaint on November 19, 2008 with the Commission averring that the Respondents had each known that the Celeren Corporation (Celeren), the Complainant’s agent, was responsible for remitting payment for utility service and that the Respondents did not inform the Complainant that the Complainant’s utility accounts were delinquent.

As to the averments pertaining to PGW, the Complaint avers that pursuant to 52 Pa. Code §56.41, setting forth utility notification procedures in order to request a deposit when an account is delinquent, PGW had a duty to inform the Complainant that its agent, Celeren, had failed to remit payment for gas service and that PGW breached that duty.¹ The Complainant further avers that to keep the account for gas service current, the Complainant paid the delinquent

¹ Complaint, Paragraphs 20 and 39

amounts to PGW, stating that the Complainant has paid for gas service twice, once to the Complainant's own agent, Celeren, and once to PGW.²

The Complaint seeks relief in the nature of reimbursement (through refund or credit) from PGW in compensation for PGW's breach of its alleged duty to notify the Complainant that Celeren was not remitting payments for gas service.³ The Complainant asserts that 66 Pa. C. §1312(a) (awarding refunds where the rates charged by a public utility were determined unreasonable, charged in violation of a Commission order, in excess of the applicable rate) provides the Commission authority to award the Complainant the relief it seeks.⁴

On December 16, 2008, PGW filed a timely answer to the Complaint admitting that PGW had entered into a contract with Celeren, the Complainant's agent, executed on June 19, 2006 for service under PGW's Interruptible Transportation Rate (Rate IT Contract). The Rate IT Contract sets forth the terms of service under that Commission approved rate. Under the Rate IT Contract, Section 20-Notice, Section 20.1, the parties agreed that written notices, requests, statements, and bills under this Agreement shall be given to the parties as designated in that section, unless changed by either party upon written notice, with confirmation, to the other.⁵ As to the communication with the Customer, the Rate IT Contract designates Celeren (at Celeren's address) as the entity to receive all bills, letters, and notices including delinquent payment and termination notices. The parties made no changes pursuant Section 20.1 of the Rate IT Contract, amending the designation for Notice. Each month PGW billed the appropriate party and expected payment for gas service rendered.

On June 12, 2009, PGW filed its Motion for Judgment on the Pleadings, maintaining that the Complaint fails to state a claim that PGW has violated any statutory or contractual obligation over which the Commission has jurisdiction and that the Complaint seeks relief in the nature of monetary damages for which the Commission has no authority to grant.

² Complaint, Paragraphs 15, 17 and 18

³ Complaint, Paragraphs 41 - 43

⁴ Id.

⁵ Complaint, Exhibit "B" and Answer to Complaint, Exhibit "A"

On August 3, 2009, the Commission issued the Initial Decision, granting PGW's Motion for Judgment on the Pleadings and dismissing with prejudice the Complaint as against PGW (Initial Decision). The Initial Decision concluded, *inter alia*, that the Commission has no authority to entertain an action for breach of contract or award damages resulting from a breach of contract, that there are not genuine issues of material fact, and that PGW is entitled to judgment as a matter of law in this case.

On August 24, 2009 the Complainant filed exceptions to which PGW filed a timely reply. By Opinion and Order adopted at the Commission's March 25, 2010 public meeting, the Commission granted the Complainant's exceptions, reversing the Initial Decision and remanded the matter to the Office of Administrative Law Judge for further hearing. On May 7, 2010 the Commission issued a notice for a Prehearing Conference on Remand scheduled for June 23, 2010 before Administrative Law Judge Herbert Smolen. On May 25, 2010, Administrative Law Judge Smolen issued a Prehearing Conference Order requiring the parties to file on or before June 16, 2010, Prehearing Conference Memoranda addressing the following issues:

II SERVICE

The person designated for service to PGW shall be its counsel.

Laureto A. Farinas, Esq.	215- 684-6982 (Office)
Philadelphia Gas Works	215-684-6798 (telefacsimile)
Legal Department	laureto.farinas@pgworks.com
800 W. Montgomery Avenue	
Philadelphia, PA 19122	

III. CONSOLIDATION vs. TRIFURGATION

PGW has no objection to the consolidation of the above captioned matters, as long as the scheduling of the hearing dates accommodates the availability of PGW witnesses.

IV. DISCOVERY

PGW is in receipt of discovery propounded by the Complainant, the preparation for which was halted due to the dismissal of the matter by Initial Decision. Pursuant to 52 Pa. Code §5.322, PGW proposes to make an informal agreement or the exchange of information with respect to the discovery. On remand PGW intends to propound discovery upon the Complainant.

V. Potential PGW Witnesses:

Anne Marie Cromley,
Philadelphia Gas Works
Customer Review Unit
800 W. Montgomery Avenue
Philadelphia, PA 19122

215- 684-6816 (Office)
Annemarie.cromley@pgworks.com

PGW – Commercial Resource Center (CRC)
Representative(s) (undetermined)
Philadelphia Gas Works
Commercial Resource Center
800 W. Montgomery Avenue
Philadelphia, PA 19122

Ms. Cromley will testify on the investigation she conducted on the formal complaint and actions that PGW and the Customer of Record took on the account. The CRC representatives will testify on the implementation of the Contract between the Complainant and its agent Celeren. PGW contends that each month it billed the appropriate party and expected payment for gas service each month. PGW intends to introduce the contract between the Complainant's agent Celeren and PGW and associated agreements as well as relevant sections of its Gas Service Tariff that govern the billing and payment for gas service.

V. ISSUES

Whether PGW complied with the agreement for gas service entered into between the Complainant's agent Celeren and PGW, with respect with the provision of billings and associated notices.

VI. **PROPOSED SCHEDULE**

PGW supports the proposed schedule of UGI Energy Services, Inc., except that brief and reply briefs might be unnecessary.

Respectfully submitted,

June 16, 2010

A handwritten signature in black ink, appearing to read "Laureto Farinas", is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

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:

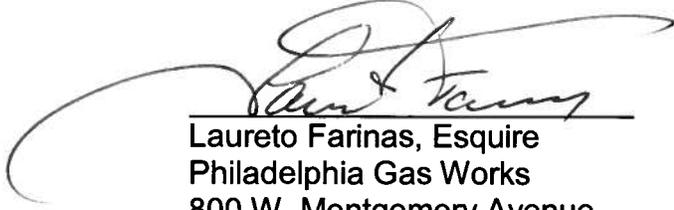
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