

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory Berry	:	
	:	
v.	:	Docket No. F – 2010 – 2163390
	:	
Philadelphia Gas Works	:	

**Philadelphia Gas Works’ Answer to the
Complainant’s Motion for Reconsideration**

Pursuant to 52 Pa. Code §5.572(e), the Philadelphia Gas Works (“PGW”) hereby answers the Motion (petition) for Reconsideration of the Order Denying the Complainant’s Motion for Judgment on the Pleadings, (order dated September 1, 2010).

Introduction:

This matter is a dispute of a bill for previously unbilled usage that PGW issued to the Complainant arising from the Complainant’s failure to apply for gas service at 2326 Reed Street, Philadelphia, Pennsylvania (Service Address), where the Complaint had been the owner occupant. PGW ultimately determined that the Complainant was a “user without contact,” and issued a bill for \$2,729.42 for gas service from the period from August 16, 2007 through April 14, 2008, and requested a deposit from the Complainant pursuant to its Tariff authorization.

The Complainant filed an informal complaint with the Commission’s Bureau of Consumer Services (BCS). The BCS decision issued on January 21, 2010 found that, “...customer is responsible for charges for service from October 29, 2007, owns property, used the service...” The Complaint appealed that BCS decision, with the filing of the Complaint in the above captioned matter. PGW answered the Complaint timely on March 30, 2010.

The Complainant filed a motion for judgment on the pleadings arguing that PGW did not include the nature of its defense to the Complaint, to which PGW responded. On September 1, 2010, the Administrative Law Judge (ALJ) issued an order denying the Complainant’s motion (ALJ’s Order) stating that the appropriate vehicle to site the nonconformity of an Answer to a Complaint is a

preliminary objection and not a motion for judgment on the pleadings. The ALJ's Order provided PGW additional time (September 13, 2010) in which it could cure the legal insufficiency of its answer and state the nature of its defense. On September 13, 2010, PGW filed its amended answer to the Complaint. Adding to its reliance on the BCS decision that found the Complainant responsible for payment of the disputed gas services, PGW also listed the sections of the Pennsylvania Public Utility Code and other legal authority that permit PGW to issue bills for previously untitled service to a "user without contract."

By document dated September 13, 2010, the Complainant filed the instant motion for reconsideration to which PGW now responds.

1. The motion for reconsideration states that the filing of a motion for judgment on the pleadings rather than a preliminary objection was the Complainant's strategic decision to eliminate the opportunity for an amended pleading. As the ALJ's Order pointed out, since the grounds for the motion was the insufficiency of the pleading, the appropriate pleading to file under 52 Pa. Code §5.61 was a Preliminary Objection. Although the PGW's answer did not exhaustively list the statutes upon which its defense is based, it did cite the decision of BCS, which found the Complainant responsible for payment of the disputed amount. As the ALJ's Order provided additional time to amend the answer and PGW did amend its answer, PGW has not waived its defenses. Furthermore, the motion for reconsideration in restating its argument from its motion for judgment on the pleadings fails to meet the criteria for the grant of reconsideration under 52 Pa. Code §5.572, in that the motion for reconsideration fails to raise new or novel arguments not previously considered. PA. Public Utility Commission v. PECO Energy Co., M-00960820 (February 12, 2009)

2. As stated above, PGW has not waived its defenses. First, the original answer contained the decision of the BCS finding that the Complainant was responsible for payment of the disputed bill. Although not an exhaustive list the basis of PGW's defense, it is a well-reasoned decision of a bureau of the Commission. The BCS decision is the first basis of PGW's defense. In addition, since the ALJ's Order provided additional time to amend the answer to the

Complaint well before the hearing date or the propounding of discovery, there is no harm the parties' interest in the ultimate disposition of this matter.

3. Questions of material fact are relevant to the disposition of a motion for judgment on the pleadings. The Complainant misapplies the standard on which a motion for judgment of the pleadings is decided. Pursuant to 52 Pa. Code §5.102(d)(1), the standard for a grant of the judgment is that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. In this case, the factual issues are plentiful. The nature of the Complainant's ownership and use of the Service Address during the disputed gas use period formulate the basis of the Complainant's appeal of the BCS decision. Additionally, the circumstances that surround PGW's request for a deposit for gas service from the Complainant formulate the basis of his dispute regarding the deposit.

Whereas, PGW, therefore respectfully requests that this Commission deny the Complainant's motion for reconsideration as it fails to present any new or novel arguments not previously considered.

Respectfully submitted,

September 23, 2010



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VERIFICATION

I, Laureto Farinas, hereby declare that I am counsel for the Philadelphia Gas Works. I am authorized to make this verification on its behalf. The facts set forth in the foregoing Answer are true and correct to the best of my knowledge, information and belief. I expect to be able to prove these facts at a hearing held in this matter. This verification is made subject to the penalties of 18 Pa. C.S. §4904, concerning false statements to authorities.

September 23, 2010



Laureto Farinas, Esquire

CERTIFICATE OF SERVICE

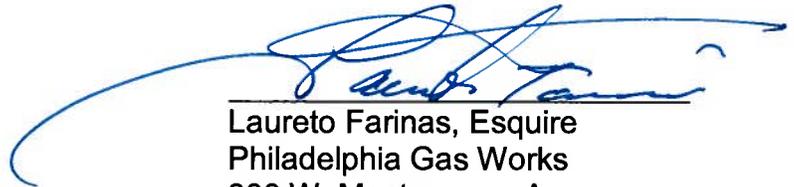
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Mr. Gregory Berry
P.O. Box 13291
Philadelphia, PA 19101

September 23, 2010



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