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October 4, 2010

Honorable Angela T. Jones, Administrative Law Judge
Suite 4063
801 Market Street
Philadelphia, PA 19107

RE: Gregory Berry v. PGW, Docket No. F-2010-2163390

Dear Judge Jones:

The complainant in the above-referenced case writes to respectfully request he be allowed to drop his minor cause of action of improper deposit request from his Complaint. He further requests the court to order a trial plan to guide the parties' arguments at the hearing to the two issues addressing the most harmful and egregious PGW practices raised here—the lack of statutory justification for “user without a contract” status, and the contractual duty to mitigate damages.

This case involves violations and abuses by PGW of the consumer protections granted by the Pennsylvania Public Utilities Code. Complainant Gregory Berry called PGW to start gas service after moving into his house in October 2007. PGW demanded a deposit that Mr. Berry felt was unreasonable, and he refused to pay it. PGW did not, however, turn off the gas, nor did they bill him for usage. Rather they knowingly allowed him to use gas for five months without billing him, before slamming him with a bill for \$2729.42 five months later, leading to the present Complaint.

This case is scheduled for hearing in your court on Friday, October 29, 2010. The complainant filed his formal Complaint on February 27, 2010. After the defendant PGW answered, complainant filed a Motion for Judgment on the Pleadings contending that the defendant had failed to provide any legal defenses, and so as a matter of law, even granting the facts as the defendant alleged them, there was nothing further for the court to decide. This court, while agreeing with the reasoning of the motion, dismissed it on the technical grounds that the proper filing was a

preliminary objection. The court in its decision also granted the defendant one more opportunity to rectify the shortcomings of its original Answer. The complainant subsequently moved the court to reconsider its decision on the motion for judgment. The defendant has filed an answer to the motion to reconsider, and also an amended answer to the original complaint. The motion to reconsider is still pending before the court.

Complainant raised several legal issues in his Complaint. The two most important are first, that the defendant violated its common law contractual duty to mitigate damages. Second, that the Public Utilities Code does not authorize PGW to place complainant Mr. Berry in “user without a contract” status, when the gas company was aware Mr. Berry was living in the house and using the gas, and willfully did not bill him for over *five months* while it racked up enormous charges against him (over \$2500 in three months). The purpose of the Public Utilities Code is to prevent precisely this kind of abusive practice. A decision on the legality of these issues is vital not only for the complainant in the present case, but for all of PGW’s customers powerless to fight such abuses.

In his formal Complaint the complainant also raised the issue that the defendant did not have the right to demand a deposit from the complainant. While this is a valid, winnable complaint, it pales compared to the severity of the violations outlined above.

In order to focus the court’s attention on what the complainant feels are the most important issues, he writes you today to respectfully request that he be allowed to drop the unauthorized deposit request complaint.

The complainant further requests the court to issue a trial plan, outlining the issues to be heard at the October 29 hearing. The defendant, even after its third attempt to amend its Answer, still has not presented the court with its legal defense to its breach of its contractual duty to mitigate damages, nor its violation of its statutory duty to bill a user that it knows is using its service. (Indeed, and not surprisingly at this point, its single citation in its third amended Answer to support its practice of putting a known service user in “user without a contract” status bears utterly no relationship to the present case. Tellingly, and disrespectfully toward both this court’s and the complainant’s time and sincerity, the defendant did not provide a pin cite to aid the court in finding the relevant passage, if there is one.) Hopefully some guidance from the court in the form of a trial plan will facilitate a fruitful discussion of the legal issues raised by this case.

Enclosed is a draft trial plan for the court’s consideration.

Respectfully,

Gregory Berry
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cc: Service List
James McNulty, PUC Secretary

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Service List:

For Defendant:

Laureto Farinas, Esquire
Philadelphia Gas Works
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(215) 684-6982

Date: October 4, 2010

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