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October 11, 2010

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

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

Dear Judge Jones:

Pursuant to 52 Pa. Code § 5.342(g), Gregory Berry hereby files this Answer to Defendant's Motion to Compel in the above captioned matter.

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

Sincerely,

Gregory Berry

Enclosure

cc: Service List
Laureto Farinas
Rosemary Chiavetta, PUC Secretary

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GREGORY BERRY,)	
Complainant and Appellant)	Docket No. F-2010-2163390
)	
v.)	
)	
PHILADELPHIA GAS WORKS)	
Defendant and Respondent)	Date: October 11, 2010
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**COMPLAINANT’S ANSWER TO
DEFENDANT’S MOTION TO COMPEL COMPLAINANT
TO ANSWER DISCOVERY REQUESTS**

Complainant Gregory Berry hereby submits the following Answer to Defendant PGW’s Motion to Compel Complainant to Answer Discovery Requests (the “Motion”).

I. INTRODUCTION

This case is about the Defendant PGW’s willful, bad faith, and unauthorized conduct toward the Complainant Gregory Berry regarding the gas service at his residence at 2326 Reed St. in Philadelphia, PA. That conduct culminated when the Defendant slammed the Complainant with a \$2700 bill after knowingly providing him with service for *five months* without billing him, in egregious violation of the spirit and letter of the Pennsylvania Public Utilities Code—written to protect consumers from just such abuses (*see* 52 Pa. Code § 56.1)—and its common-law contractual duty to mitigate damages.

This complaint is about the misbehavior of the Defendant. No allegation has been made of misconduct on the part of the Complainant. The Complainant is current with his gas bill. He has paid for every undisputed cubic foot of gas that he was billed for in a timely fashion. The Defendant does not dispute this, has made no allegations of failure to pay or any other cause of action against the Complainant. Yet inexplicably, the first five of the Defendant's interrogatories, according to its Motion to Compel that is under consideration here, relate to proving that the Complainant was aware of his duty to pay for his gas service. No allegation to the contrary has ever been made or even hinted at. The Complainant pays his bills. The Complainant knows the law. The Complainant knows his obligations. The Complainant *honors* his obligations, and the Defendant does not disagree. Unfortunately the same can not be said for the Defendant, and this case is about those breaches—the *Defendant's* breaches—of its legal duties and obligations.

Demand Nos. 7 to 9 ask for legal analysis and conclusions. The purpose of discovery is to develop the *factual* record. The legal arguments should have been (although in the Defendant's case were not) developed during the pleadings stage. The Complainant took care to explain in great detail exactly what the Defendant's violations were in his original Complaint. In his Answers to the Interrogatories the Complainant referred the Defendant to the legal argument carefully laid out in the Complaint. If

after *reading* the Complaint the Defendant still feels it is an “assemblage of bald assertions” (Motion 6), the Complainant respectfully suggests the trouble lies elsewhere than with the Complaint.

Finally, the Complainant *did answer* every one of the interrogatories but No. 6. (No. 6 is discussed in more detail below.) It is unclear from the Motion to Compel exactly what it is the Defendant wishes the court to compel the Complainant to do.

II. SPECIFIC RESPONSES TO DEFENDANT’S MOTION

Demand No. 1

This case is about Defendant’s willful misconduct and violations of the Public Utilities Code and common-law contractual duties. It has a duty to bill for a known use of gas. The facts relevant to the determination of that legal question are undisputed. The Complainant was living in the house, and Defendant knew it: “PGW admits that it requested a security deposit from the Complainant. . . . [T]he Complainant telephoned PGW on October 10, 2007.” (Defendant’s Answer to the Original Complaint (“Answer”) 2). Even more important, Defendant knew Complainant was using gas: “*The gas usage was billed to a placeholder account*” (*Id.* (emphasis added).) What is not relevant is when “the Complainant[] [took] possession and control over the Service Address.” (Motion 2.) The issue in this case is not whether the Complainant personally used the gas that was consumed. The issue is that *after the Defendant knew the Complainant was*

using the gas, it had a duty to bill him for the usage. The date that the Complainant took possession will not aid the court in deciding on this question of law.

Reaffirming his General and Specific objections to this Demand, and without waiver thereof, the Complainant states for the second time that he purchased, acquired title, took possession, and made the Service Address his residence in October 2007.

Demand No. 2

PGW, *knowing* of the Complainant's use of gas service, failed to bill him, in violation of its duties under the Public Utilities Code and under contract law.

Where the Complainant lived before the date that he took up residence at 2326 Reed St. is, if possible, less relevant than Demand No. 1. As the date the Complainant took possession of the Service Address is not at issue, "confirming" (Motion 3) when he took possession is not necessary or relevant either.

This Demand is unduly burdensome and seeks documents and/or information that are not within the possession, custody, and/or control of the Complainant. The Complainant lived at the boarding house for a brief time while awaiting the closing of the Service Address purchase. He does not know the address and has no documentation regarding it. Given the

utter irrelevance of this Demand, the effort required to answer it is not justified.

Reaffirming his General and Specific objections to this Demand, and without waiver thereof, the Complainant restates that prior to 2326 Reed St., he lived in a boarding house in Bryn Mawr, Pennsylvania, while awaiting completion of the home sale.

Demand No. 3

The question before the court in this case is whether PGW can refuse to bill a known user of its gas. Where the use is *unknown*, the parties agree, it would be nonsensical to require PGW to bill the unknown use. But in this case, PGW *did* know of the use, and refused to bill the Complainant anyway (or to terminate his service, its only other statutory choice). The Motion states that the purpose of Demand No. 3 is to determine the accuracy of the disputed bills. The *amount* of the bill is not at issue in this case. No one has questioned whether that gas was in some way consumed, and the accuracy of PGW's meter is not in question. The problem is PGW's willful refusal to bill the known user of the gas while over \$2700 worth of gas was apparently consumed. The Complainant could not know of the problem—that is the very purpose of the bill. *Had he known*, he could have taken steps to rectify the situation. Only the Defendant was in a position to know of the inordinate amount of gas being used, and only the

Defendant was in a position to notify the Complainant of that use. The Defendant's egregious refusal to do so is a violation of its duty of good faith and fair dealing, its specific billing duties under chapter 56 of the Public Utilities Code, and its common-law duty to mitigate damages.

The Defendant states in its Motion that the configuration and gas usage of the Service address "is standard information to be placed in the record of Commission billing disputes." Since this case is not a billing dispute, the relevance of this vague and unverifiable claim is unclear. Even if this were a billing dispute, how "standard" it is to request the information hardly bears on its legality. By that logic the Defendant might claim its willful violations of the Public Utility Code are acceptable simply because it does so all the time.

There is no need for this court to "judge" (Motion 3) a fact that is not in dispute. Considering information that will aid it in judging a fact that is not in dispute is a waste of this court's time. Even so, the Complainant *did* answer this Demand, and will do so now for the second time. Reaffirming his General and Specific objections to this Demand, and without waiver thereof, the Complainant restates that the square footage of 2326 Reed Street is approximately 2200 square feet. It has three floors. It has two rooms on the top floor, three on the middle floor, and three on the first floor. The house has one boiler, one water heater, and one stove/oven.

Demand No. 4

The Defendant states in its Motion that the purpose of Demand No. 4 is to gather information “that will provide a basis from which to judge whether the Complainant knew or should have known of his obligation to apply and pay for gas services he uses.” (Motion 4.) As stated above, no question has been raised regarding the Complainant’s knowledge of his own obligations. The Complainant pays his bills. The Complainant knows the law. The Complainant knows his obligations. The Complainant honors his obligations. The Defendant, apparently agreeing that the Complainant has done nothing wrong, has made no claim to the contrary. For the Defendant now, *seven months* after the Formal Complaint was filed, and only three weeks before the hearing, to insinuate the Complainant is in some violation of his duties under the law, borders on vexatious. What *is* at issue is the Defendant’s willful and egregious violations of the Public Utilities Code and its common-law contractual duty to mitigate damages. It is to examine *those* violations that this suit was brought.

The above discussion notwithstanding, the Defendant’s Motion regarding Demand No. 4 is puzzling, as the Complainant has already answered it. It is unclear how one could answer more completely. However, reaffirming his General and Specific objections to this Demand, and without waiver thereof, the Complainant restates, now for the second

time, that the utilities that are or were used at 2326 Reed Street are natural gas, electricity, water, and internet.

Demand No. 5

Please see discussion under Demand No. 4 above. Notwithstanding that discussion, and reaffirming his General and Specific objections to this Demand, and without waiver thereof, the Complainant restates, now for the second time, that he began each of these services in October 2007.

Demand No. 6

The Defendant requests the Complainant's total gross monthly income at the Service Address. Apart from being vague and overbroad—does it wish for the Complainant's income today? Last year? In October of 2007, or in April of 2008?—the request is, by the Defendant's own admission, premature. It seeks the information in order to “provide a basis from which to provide the Complainant with a payment agreement on any outstanding balance of his account for gas services at the end of this proceeding.” (Motion 5.) This outrageous request is all but putting words in this court's mouth. The Complainant respectfully requests the Administrative Law Judge retain her deserved honor, privilege, and position in this court, and decide the outcome of this case herself, rather than abrogate that duty to the Defendant, however much the Defendant might prefer it that way.

The Defendant goes on to state that “[t]his information is typically requested by the Administrative Law Judge in a billing dispute to enable to [sic] the Complainant to pay a large outstanding account balance in installments” (*Id.*) As the Defendant actually emphasizes here that it is attempting to take over the role of the Administrative Law Judge, the Complainant respectfully suggests that the Court thank the Defendant for its offer, but decline.

The Defendant presents the court with three possible explanations for this Demand. One, it wishes to take over the role of Judge in this case. Two, it is so deficient in its understanding of the basic procedures of an administrative hearing that it does not realize that the role of Defendant and Judge are distinct. Both of those explanations beggar belief. The only unfortunate explanation remaining is that the Defendant is aware what it is doing, which is to try to intimidate and harass the Complainant right under the Court’s nose. The Complainant respectfully suggests that sanctions would not be inappropriate in such an outrageous case of professional misconduct.

The Complainant furthermore assures the court that at the appropriate time, if the Court requests it, the Complainant will in good faith assist the Court in formulating a payment plan for either the Defendant or the Complainant, as necessary.

As one last parenthetical observation, if the Defendant had billed the Complainant monthly for the known usage of gas, as it is required by statute and common law to do, there would not be a large outstanding balance on the account.

Demand Nos. 7, 8, & 9

The Defendant is correct that the specific statutes that the Defendant violated are relevant to this litigation. The Complainant did not object to these demands on the grounds of relevance. Rather the Demand seeks legal research and conclusions that are explicitly barred from discovery by the Public Utilities Code, 52 Pa. Code § 5.323(a). Furthermore, the Complainant's legal basis for its complaint is laid out in great detail in its Original Complaint. Reaffirming his General and Specific objections to this Demand, and without waiver thereof, the Complainant, now for the second time, incorporates the allegations as set forth in the Original Complaint into its response to this Demand.

Finally, the Defendant, in its response to the Complainant's Objections to Demand Nos. 7, 8, & 9, states that it needs this information in order to "further form its defense and prepare cross-examination of the Complainant at a hearing of this matter." (Motion 5.) As the Complainant clearly stated in his response to Demand No. 10, he will not be calling any

witnesses at the hearing on this matter, so cross-examination is a procedural impossibility.

Demand No. 10

In a comment on the Complainant's response to Demand No. 10, the Defendant states that "PGW assumes that what is meant is that only the Complainant will give testimony on his own behalf." (Motion 7.)

The Complainant respectfully, collegially, suggests the Defendant take the Complainant at his word.

III. CONCLUSION

For the foregoing reasons, the Complainant respectfully requests the Court to reject the Defendant's Motion to Compel.

Respectfully submitted,

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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
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

Date: October 11, 2010

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