



Philadelphia Gas Works

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December 21, 2010

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Gregory Berry v. PGW, Docket No. F – 2010 – 2163390

Dear Secretary Chiavetta:

Pursuant to the Administrative Law Judge's Briefing Order dated November 10, 2010, which established the schedule of the parties' briefs in the above captioned matter, the Respondent, the Philadelphia Gas Works (PGW) hereby files its Main Brief.

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

Sincerely,

A handwritten signature in blue ink that reads "Danielle Ross". The signature is written in a cursive, flowing style.

Danielle Ross

Enclosure

cc: Mr. Gregory Berry
Anne Marie Cromley (PGW Mail)
Linda Pereira (PGW Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory Berry

v.

Philadelphia Gas Works

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Docket No. F – 2010 – 2163390

**MAIN BRIEF OF
PHILADELPHIA GAS WORKS**

Pursuant to the Administrative Law Judge’s Briefing Order dated November 10, 2010, which established the schedule of the parties’ briefs in the above captioned matter, the Respondent, the Philadelphia Gas Works (PGW) hereby files its Main Brief. Administrative Law Judge (ALJ) Angela T. Jones presided over the Initial Hearing of this matter on October 29, 2010.

I. Statement of Case

This matter is a dispute of a bill for previously unbilled usage of \$2,729.42 for gas service for the period from October 2007 through April 14, 2008 that PGW issued to the Complainant arising from the Complainant’s failure to complete the application process for gas service at 2326 Reed Street, Philadelphia, Pennsylvania (Service Address). The Complainant had been the owner occupant since October 2007.¹ Gas service to the Service Address remained on after the departure of the occupant prior to the Complainant. PGW continued to receive meter readings of whatever gas usage occurred at the Service Address from the monthly readings detected by the PGW Automatic Meter Reading device (AMR) installed at the Service Address. Gas continued to flow to the Service Address in anticipation of the new owner/occupant establishing gas service.²

On October 30, 2007, the Complainant called PGW to schedule the turn on for gas service for the Service Address.³ PGW and the Complainant originally scheduled a turn on date of November 8, 2007, but the turn on did not occur.⁴ On the October 30, 2007 telephone call to PGW, the Complainant learned that PGW required the payment of a deposit. Upon learning of the deposit requirement, the Complainant terminated the

¹ Complaint Attachment, p. 2

² Tr. pp. 201 – 203

³ PGW Exhibit 4, p 3 of 4 and Tr. p. 87

October 30, 2007 telephone call with PGW.⁵ The Complainant, after terminating the October 30, 2007 telephone call to PGW, did not contact PGW again to provide the additional information that would have completed his application for gas service.⁶ In ending the telephone call, the Complainant had only made a partial application for gas service since the Complainant's termination of the October 30, 2007 telephone call to PGW did not result in providing billing information into PGW's system.⁷

On November 8, 2007, a PGW service person contacted the Complainant while on route to the Service Address to complete the scheduled turn on, the Complainant stated that he did not have an account with PGW and would contact PGW when he was ready.⁸ While there was no customer of record at the Service Address, PGW kept an accounting for gas service through the use of a "placeholder" account until the new Customer of Record came forward or could be identified.⁹ After several months of detecting gas usage at the Service Address, PGW issued a "72 Hour" termination notice in April 2008 in order to alert the occupant at the Service Address that there had been usage metered at that address in order to have the gas user contact PGW to establish an account.¹⁰

After attempting to provide notification to the occupant to make application for gas service, the Complainant was determined to be a "user without contact," and issued a bill for \$2,729.42 for gas service from the period covering October 2007 through April 14, 2008.¹¹ PGW also requested a deposit from the Complainant pursuant to its Tariff authorization.¹²

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

⁴ Tr. p. 87 and pp. 232 and 233

⁵ Tr. pp. 87 – 97

⁶ Id.

⁷ Tr. pp. 162 - 165

⁸ Tr. pp. 232, 233

⁹ Tr. pp. 151 – 154, 163 – 170 and PGW Exhibit - 6)

¹⁰ Tr. pp. 166 – 167

¹¹ Decision of the BCS, PGW Exhibit 1

¹² Deposits are authorized by the Pennsylvania Public Utility Code at 66 Pa. C.S. §§1404, 1407(a), (d) and (e). During the course of the proceeding, the Complainant withdrew his dispute with PGW's requirement of a deposit.

used the service...”¹³

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, ALJ Angela T. Jones 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 any legal insufficiency that might be in 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.” The Parties also engaged in discovery.

Administrative Law Judge Angela T. Jones presided over an Initial Hearing of this matter on October 29, 2010. By order dated November 10, 2010, the ALJ established a briefing schedule, with the Parties’ Main Briefs due on or before December 21, 2010.

II. Statement of the Questions Involved

Whether PGW violated its obligation to provide adequate and reasonable service under the Public Utility Code, when it billed the Complainant for usage it had not previously billed, because the Complainant’s actions prevented PGW from having completed application information to enable proper billing for the disputed period?

Whether the Complainant is excused from payment for gas services he consumed at his residence, even if PGW is deemed aware of the Complainant’s consumption of gas resulting in the delay of several months in billing the Complainant?

¹³ Decision of the BCS, PGW Exhibit 1

III. **Summary of the Argument:**

The Complainant failed to meet his burden of proof to show that PGW violated its obligation to provide adequate and reasonable service under the Public Utility Code. PGW billed the Complainant for approximately 6 months of gas usage that it had not previously billed because the Complainant's actions prevented PGW from having completed application information that would have enabled PGW's Billing Credit and Collection System (BCCS) to provide billing to the Complainant after each the several months following the Complainant's purchase and occupancy of the Service Address. The Complainant was a "user without contract" with respect to PGW gas service. For these reasons, the Complainant is culpable for the failure to complete his application for service with PGW and therefore is not be excused from the responsibility for payment of charges for service for the disputed period. The Complainant owned the property and consumed the gas.

In the alternative, even if PGW's is deemed to have been aware that the Complainant was occupying his residence and consuming gas without a completed contract, the Complainant is not excused from the responsibility for payment of charges for service for the disputed period. The Complainant owned the property and consumed the gas.

III. **Argument**

A. The Complainant has failed to show that PGW has acted unreasonably or provided unreasonable service in violation of the of the Public Utility Code §1501

1. The Complainant has the burden of proof in this matter to show the provision of unreasonable service.

Pursuant to the Public Utility Code, 66, Pa. C.S. §332(a), the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. To establish a sufficient case and satisfy her burden of proof, the Complainant must show that the PGW is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. P.U.C. 196 (1990),

Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976). Such a showing must be made by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. P.U.C., 134 Pa. Cmwlt. 218, 578 A.2d 600 (1990). A finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. Mill v. Pa. P.U.C., 67 Pa. Cmwlt. 597, 447 A.2d 1100 (1982). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. V. Pa. P.U.C., 489 Pa. 109, 419 A.2d 1037 (1980). The Complainant failed to meet his burden of proof in showing that PGW did not provide reasonable service. Pursuant to the Pennsylvania Public Utility Code at 66 Pa. C.S.A. §1501 - Character of service and facilities:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public . . .

In the record of the instant case, shows that the Complainant has failed to show that PGW's inability to bill the Complainant between the months October 2007 through April 14, 2008 was the result of inadequate service. The Complainant's case contains no credible evidence of unreasonable or inadequate service on the part of PGW that was the cause of the Complainant's not receiving a bill for service from October 2007 through April 2008. The record shows that PGW responded to the Complainant's call to establish gas service on October 30, 2007.¹⁴ PGW scheduled a turn on appointment. In order to provide the Complainant with notice of gas usage registering with no one to bill, PGW, after only several months of registering gas usage, sent a notice to the Complainant threatening termination if the Complainant did not make application for gas service.¹⁵ PGW only threatened to terminate gas service after the winter heating season had passed.

The Complainant's own actions were the primary cause of PGW's inability to bill. The Complainant prematurely ended his call to PGW that would have completed the

¹⁴ PGW Exhibit 4, P. 3 of 4 and Tr. p. 87

¹⁵ Tr. pp. 166 - 167

application process. The Complainant did so, because he was dissatisfied (at that time) with PGW's request for a deposit to establish his account. Concluding that telephone conversation before full information was given to enter into PGW billing system prevented PGW billing system from sending regular bills to the Complainant. Further, the Complainant acknowledged on November 8, 2007, that he did not have a contract with PGW.¹⁶ The Complainant cannot now hide behind this conspicuous technicality that he lacked a contract and therefore is not responsible for payment.

2. The Commission has issued policy on the "user without contract."

In its decisions, the Commission has acknowledged and provided direction to utilities in managing "users without contracts." In Pa PUC v. PGW, Docket No. R-00061931; R-00061931C0001, et al, PAPUC 2007 Pa. PUC Lexis 45, September 28, 2007, Entered, September 13, 2007, Adopted; the Commission has exempted "Users without contract" from the definition of unauthorized usage (theft), recognized the protections afforded against immediate termination for theft and instructed PGW to have the use of the 72 hour notice included in its Tariff.¹⁷

3. Even viewing PGW's issue of the bill \$2,729.42 for gas service for six months as a bill for previously unbilled service, the Complainant is not relieved of his responsibility to pay.

First, pursuant to 66 Pa. C.S. §1301, the Pennsylvania Public Utility Code enables PGW to charge each gas customer for every unit of gas used under the rates in effect. As just and reasonable rates, utilities must charge each customer for every unit of gas used under the rates in effect.

For issuing bills for previously unbilled usage, PGW's practice is only to bill for gas usage of the most recent 4 years to the date of the bill. The legal authority for this

¹⁶ Tr. pp. 232 and 233

¹⁷ In Pa PUC v. PGW, Docket No. R-00061931; R-00061931C0001, et al, PAPUC 2007 Pa. PUC Lexis 45, September 28, 2007, Entered, September 13, 2007, Adopted, the Commission adopts the Recommended Decision of ALJ's Jones and Fordham in Pa PUC v. PGW, Docket No. R-00061931; R-00061931C0001, et al, PAPUC 2007 Pa. PUC Lexis 46, July 24, 2007

practice is the Pennsylvania Public Utility Code at 66 Pa. C.S. § 3314, and various cases including Angie's Bar v. Duquesne Light Company, C-81881, Pennsylvania Public Utility Commission, 1990 Pa. PUC LEXIS 4; 72 Pa. PUC 213, March 27, 1990 and Roderick Berry v. Philadelphia Gas Works, F-01184412, Pennsylvania Public Utility Commission, 2004 Pa. PUC LEXIS 27, April 15, 2004, Entered.

In Roderick Berry v. Philadelphia Gas Works, the Commission elaborated on its use of the Code 66 Pa. C.S. §3314(a) to set a limit on the recoupment for funds when a utility fails to bill a customer for a period.

In that case, the Commission stated that,

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.

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.

Roderick Berry v. Philadelphia Gas Works, F-01184412, Pennsylvania Public Utility Commission, 2004 Pa. PUC LEXIS 27, April 15, 2004, Entered

In the instant case, the record clearly shows that the Complainant surely has culpability even though the billing for previously unbilled services is merely for a six month period. The Complainant prematurely terminated his call to PGW to establish gas service on October 30, 2007, which resulted in his not having a contract with PGW to begin to receive bills. Further, the Complainant acknowledged on November 8, 2007, that he did

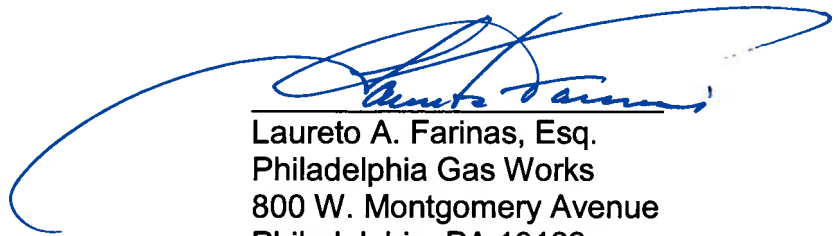
not have a contract and cancelled the turn-on visit from a PGW service person. Had the Complainant cooperated fully he would have received bills in due course for his gas service. Through the Complainant's non-cooperation with PGW, the Complainant has caused the thing about which he complains.

IV. CONCLUSION

For the foregoing reasons, PGW respectfully requests that the Commission dismiss the Complaint and issue a decision finding that PGW was neither in violation of any section of the Pennsylvania Public Utility Code nor its Tariff in connection with its actions in the above referenced matter and further order that the Complainant is responsible for payment of the disputed PGW bill of \$2,729.42 for gas service for the period from October 2007 through April 14, 2008

Respectfully submitted,

December 21, 2010



Laureto A. Farinas, Esq.
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122

Proposed Findings of Fact

1. The Complainant bought and moved into the property at 2326 Reed Street; Philadelphia, Pennsylvania (Service Address) in October 2007. (Complaint Attachment, p. 2)
2. Gas service to the Service Address remained on after the departure of the occupant prior to the Complainant. PGW continued to receive meter readings of whatever gas usage occurred at the Service Address from the monthly readings detected by the PGW Automatic Meter Reading device (AMR) installed at the Service Address. Gas continued to flow to the Service Address in anticipation of the new owner/occupant establishing gas service. (Tr. pp. 201 – 203)
3. On or about October 30, 2007, the Complainant called PGW to schedule the turn on for gas service for the Service Address. (PGW Exhibit 4, p 3 of 4 and Tr. p. 87)
4. PGW and the Complainant originally scheduled a turn on date of November 8, 2007, but the turn on did not occur. (Tr. p. 87 and pp. 232 and 233)
5. On the October 30, 2007 telephone call to PGW, the Complainant learned that PGW required the payment of a deposit. Upon learning of the deposit requirement, the Complainant terminated the October 30, 2007 telephone call with PGW. (Tr. pp. 87 – 97)
6. The Complainant, after terminating the October 30, 2007 telephone call to PGW, did not contact PGW again to provide the additional information that would have completed his application for gas service. (Tr. Id.)
7. The Complainant had only made a partial application for gas service since the Complainant's termination of the October 30, 2007 telephone call to PGW did not result in providing billing information into PGW's system. (Tr. pp. 162 - 165)
8. On November 8, 2007, a PGW service person contacted the Complainant while on route to the Service Address to complete the scheduled turn on, the Complainant stated that he did not have an account with PGW and would contact PGW when he was ready. (Tr. Pp. 232, 233)

9. While there was no customer of record at the Service Address, PGW kept an accounting for gas service through the use of a "placeholder" account until the new Customer of Record came forward or could be identified. (Tr. pp.151 – 154, 163 – 170 and PGW Exhibit - 6)

10. After several months of detecting gas usage at the Service Address, PGW issued a "72 Hour" termination notice in April 2008 in order to alert the occupant at the Service Address that there had been usage metered at that address in order to have the gas user contact PGW to establish an account. (Tr. pp 166 – 167)

11. PGW had not issued a termination notice to the Complainant prior to April 2008, as PGW's policy is to refrain from non-safety related terminations to residential service addresses during the winter months, from December 1 through March 31, annually. (Tr. p. 168)

12. PGW ultimately determined that the Complainant was a "user without contact," and issued a bill for \$2,729.42 for gas service for the period from October 2007 through April 14, 2008.

13. Through the duration of the winter period where the Complainant has disputed his responsibility for payment for gas service, the Complainant was aware that he had no contract with PGW resulting in his inability to receive a PGW bill.

14. PGW's actions with respect to its notifying the Complainant are a reasonable method to notify "users without contract" of gas services to contact PGW in order to establish an account for billing.

15. The bill of \$2,729.42 for gas service for the period from October 2007 through April 14, 2008 is correct as rendered.

16. The Complainant is responsible for payment of the bill for \$2,729.42 for gas service for the period from October 2007 through April 14, 2008.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory Berry

v.

Philadelphia Gas Works

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Docket No. F – 2010 – 2163390

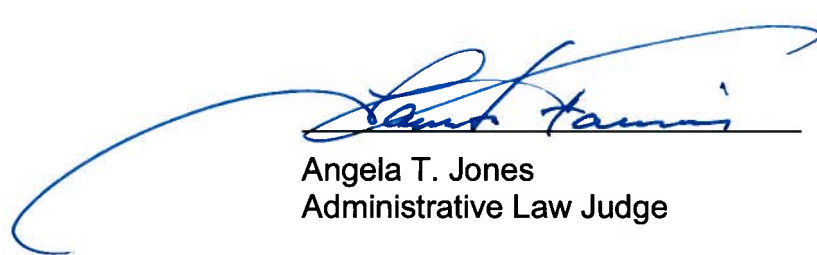
PROPOSED ORDER

1. That the formal Complaint filed by Gregory Berry against the Philadelphia Gas Works at Docket No. F – 2010 – 2163390 is dismissed as the Complainant, Gregory Berry had the burden of proof pursuant to 66 Pa. C.S. §332(a) and failed to carry that burden.

2. That the Complainant is responsible for payment of the disputed PGW bill of \$2,729.42 for gas service for the period from October 2007 through April 14, 2008.

3. That the Secretary's Bureau mark this matter closed.

Date:


Angela T. Jones
Administrative Law Judge

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:

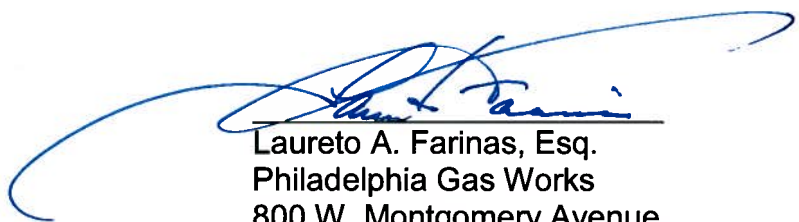
Mr. Gregory Berry
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December 21, 2010



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