

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Nona Lewis	:
	:
v.	: Docket No. F – 2010 – 2171442
	:
Philadelphia Gas Works	:

**PHILADELPHIA GAS WORKS’
REPLY TO COMPLAINANT’S EXCEPTIONS**

Pursuant to 52 Pa. Code §5.535, and the Secretary’s letter dated December 27, 2010, in the above captioned matter, the Philadelphia Gas Works, (“PGW”) hereby files timely, an original and nine (9) copies of its reply to the Complainant’s exceptions to the November 24, 2010 Initial Decision (Initial Decision).

I. **INTRODUCTION**

In this matter, the Complainant alleges that there are incorrect charges on her PGW bill for gas service to the Complainant’s residence at 3046 N. Bambrey Street, Philadelphia, Pennsylvania (Service Address).

On January 19, 2009, the Complainant contacted PGW for heater service at the Service Address. On January 21, 2009, a PGW technician performed service at that Service Address. The technician replaced the thermostat and, inter alia, replaced the pilot assembly because the burners would not come on. On January 22, 2009, the complainant contacted PGW stating that she smelled gas in her basement. A PGW technician came to the property and reported that the house heater had been service on January 21, 2009; that she smelled a little gas well performing the service work.

On February 2, 2009, PGW records indicate that PGW field service technicians visited the service address two days apart. Both physically read the meter that was roughly double that of the reading from the automatic meter-reading device (AMR). The situation was referred to PGW’s meter shop for investigation. On February 23, 2009, PGW visited the service address to investigate the discrepancy between AMR reading and the manual reading on the meter. On February 24, 2009, PW determined that the AMR was set at 1-foot drive at index 3786.38 while the manual reading from the meter was 7574. PGW reprogrammed the AMR for the 2-foot drive calibration to be

consistent with the meter. The difference in the AMR reading from the manual reading of the meter caused the complainant to be billed for only half of the actual gas consumption.

On March 2, 2009, PGW issued to the complainant a bill for producing unbilled services for \$7566.73. On April 17, 2009, PGW determined that the claimant was entitled to a credit adjustment to that bill for \$3899.78, as PGW adjusted the bill to charge the Complainant only for the most recent four years usage. The bill ultimately issued to the complainant was for \$3666.95

On April 27, 2009, the complainant filed an informal complaint to which the Commission's Bureau of consumer services issued a decision on March 23, 2010 finding that due to the error in the AMR meter calibration, PGW could render a makeup bill for the uncollected amount.

On April 23, 2010, Complainant filed an appeal of that BCS decision. The Complaint requests relief in the form of the removal of the make-up bill from the Complainant's account. On August 26, 2010, a hearing was held before Administrative Law Judge Charles E. Rainey (now Chief Administrative Law Judge).

On November 24, 2010, the Commission issued the Initial Decision, dismissing the Complaint, concluding that backbilling by a utility is limited to a four-year period in cases where the customer has no culpability.

On or about December 21, 2010, the Complainant filed exceptions to the Initial Decision. By letter dated December 27, 2010, the Secretary served PGW with the Complainant's exceptions and an instruction to file any reply by January 6, 2011. This reply follows.

II. PGW'S REPLY TO EXCEPTIONS

The Complainant's exceptions fail to point to any error in fact or law contained in the Initial Decision. In her exceptions, the Complainant appears to restate the arguments made in the complaint. The Commission should deny the Complainant's exception because she fails to refute the case law governing the issuing of make-up bills. 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. At PGW, this has become known as the "Four

Year Rule.” The legal authority for this rule is the Pennsylvania Public Utility Code at 66 Pa. C.S. § 3314 (the Code), 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 under-billings. 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. The record clearly indicates that the Complainant is not responsible for the under billing here. Accordingly, we will limit the billing and usage inquiry on remand to the four-year period from June 11, 1998 to June 11, 2002. We reiterate that the state of the record at this point does not support a finding that a make-up bill is warranted in this instance. We also note that since any potential make-up bill would have been accrued over a four year period, any payback period warranted by the record should also be limited to four years.

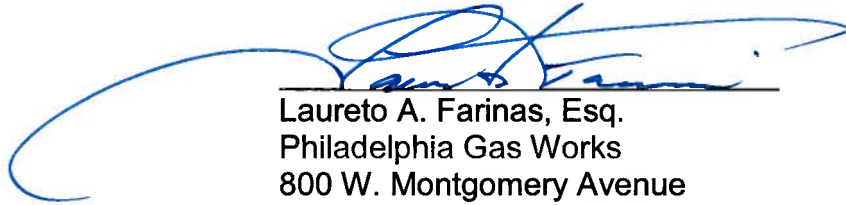
Roderick Berry v. Philadelphia Gas Works, F-01184412, Pennsylvania Public Utility Commission, 2004 Pa. PUC LEXIS 27, April 15, 2004, Entered

III. CONCLUSION

For the reasons stated above, the Commission should deny the Complainant's exceptions to the Initial Decision and dismiss the Complaint.

Respectfully submitted,

January 6, 2011



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

CERTIFICATE OF SERVICE

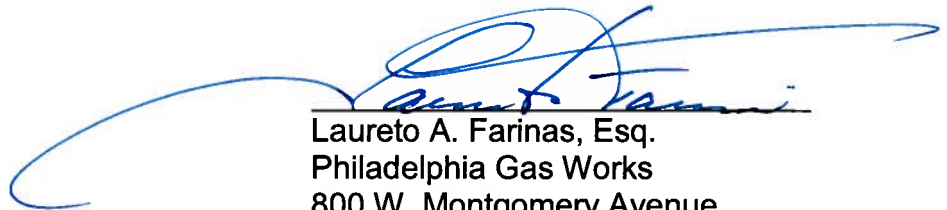
I HEREBY CERTIFY THAT I HAVE THIS DAY SERVED A TRUE COPY OF THE FOREGOING DOCUMENT UPON THE PARTICIPANTS LISTED BELOW, IN ACCORDANCE WITH THE REQUIREMENTS OF 52 PA CODE §1.54 (RELATING TO SERVICE BY A PARTICIPANT).

Service List:

For Complainant:

Ms. Nona Lewis
3046 N. Bambrey Street
Philadelphia, PA 19132

January 6, 2011



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