

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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|---|---|---------------------------|
| GREGORY BERRY, |) | |
| Complainant and Appellant |) | Docket No. F-2010-2163390 |
| |) | |
| v. |) | |
| |) | |
| PHILADELPHIA GAS WORKS |) | |
| Defendant and Respondent |) | Date: January 6, 2011 |
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**COMPLAINANT'S REPLY BRIEF
TO DEFENDANT'S MAIN BRIEF**

Gregory Berry, Complainant and Appellant, respectfully submits this Reply Brief to the Defendant PGW's Main Brief in the above-captioned matter.

FACTS

The Complainant respectfully refers the court to the facts as set forth in the Complainant's Main Brief, and respectfully reminds the court that the Defendant is bound by the facts it has averred in its pleadings, which are set forth in the Complainant's Main Brief..

ARGUMENT

As a preliminary matter, the Complainant respectfully reminds this court that the Defendant is bound by the legal defenses it presented in its Answer to the Complainant's Formal Complaint. None of the defenses

presented by the Defendant in its Main Brief had been brought up previously, and hence must be ignored entirely.

A. PGW Conspicuously Fails to Address the Issues Before This Court

The Complainant has presented three arguments to this court. First, the PUC Code requires PGW to bill a known user of its gas. Second, fundamental common-law contract law requires a party to mitigate damages. And third, PGW has violated its duty of good faith and fair dealing by failing to bill Mr. Berry for the known use of gas. These arguments have been explored extensively in the Complainants previous filings. PGW, in its Main Brief, as well as every other document it has filed before this court, has failed to address any of them. PGW does not even *mention* a party's duty to mitigate damages and its duty of good faith and fair dealing in its Main Brief. One can only imagine PGW is hoping the court will forget about these two obvious and inescapable violations of its duties. But the duties do exist, and PGW has violated them. The "ostrich" defense is not effective.

PGW likewise fails to even mention the fact that it does not have statutory authorization to place a user in "user without contract" status. The remainder of its Main Brief only serves to reinforce, point by point, that PGW had a duty to bill Mr. Berry, had the ability to bill Mr. Berry, and did *not* bill Mr. Berry. For all these reasons this court must find against the

defendant, and order PGW to end its practice of unfairly slamming customers with exorbitant bills.

B. PGW's Failure to Even *Claim* It Has Statutory Authorization Not to Bill a Known User of Gas Settles This Case Definitively in Complainant's Favor; Its Entire Brief Is an Implicit Acknowledgement of That Duty

The Defendant in its Main Brief admits to everything necessary to find for the Complainant in this case. PGW should have billed Mr. Berry, a known user of its gas, and did not bill, as required by the PUC Code. This case is very simple, and is laid out amply by the Defendant. The Defendant's consistent refusal to even *address* whether the PUC Code allows it not to bill a known user of gas tells this court everything it needs to know. PGW has not put up a defense because there is no defense for it to present. PGW never one time in all of its filings even claims that the PUC Code in fact does allow it not to bill a known user, let alone presents any kind of cogent argument to that end. This court can only conclude that PGW in fact agrees with Mr. Berry on the law. The flimsy argument it does present only goes to reinforce that PGW knew Mr. Berry was using gas, knew where he was (obviously), and did nothing to bill him for the service.

C. PGW's Only Defense, That Its System Simply Does Not Know How to Send a Bill to a User with a Name and Address, Admits That PGW's Own Failed System Was at Fault

By protesting that its system is not set up to bill a known user such as Mr. Berry, it has acknowledged everything the court needs to know: it knew gas was being consumed at the Service Address, it knew Mr. Berry was there, and it *did not bill him*. To tell this court that it could not send Mr. Berry a bill *to the address where it sent a service person, after calling Mr. Berry to make sure he was home*, might be called mendacious if it were not so facially false. PGW had Mr. Berry's name. It had his address. It even had his phone number. And yet it did not have sufficient information to send him a bill? PGW has admitted repeatedly that it *did* have enough information to send him a bill: *its own system* for whatever reason simply did not do so. (See PGW's Main Brief at p. 4: PGW did not bill "because the Complainant's actions prevented PGW from . . . provid[ing] billing to the Complainant.") *That* is what PGW wants this court to hold Mr. Berry responsible for. That name and address is for some bizarre, unexplained reason not sufficient to send someone a piece of mail. Anyone in America can send a letter given the recipient's name and address. (The Complainant requests this court to take judicial notice of what is needed to send a letter.) But not PGW. And *that* is what PGW wishes to say is the Complainant's fault. (See also p. 5 of PGW's Main Brief, where it highlights "PGW's inability to bill.")

If PGW had mounted some defense that in fact the PUC Code does authorize User without a Contract status, this court might have something to contemplate. But the Defendant has made this court's job far easier than that. The issue PGW wishes this court to decide is: is a name and address sufficient to send someone a piece of mail? By taking judicial notice of the fact that it is, the court can quickly put this entire matter to rest.

D. The Most That Can Be Said for PGW's Remaining "Arguments" Is That They Are Irrelevant; Many Serve to Prove the Complainant's Case

PGW closes its Main Brief with two astoundingly irrelevant cases. The first "point" it makes is that the Commission has "acknowledged" "users without a contract." (p. 6 of PGW's Main Brief.) It has indeed done so, by saying they are different from the definition of "unauthorized usage." Not surprisingly by now, this is *precisely* the point Mr. Berry has been making all along, first in his original Formal Complaint. The PUC Code does deal with "unauthorized usage," as the Commission observes. Obviously, the Commission points out, a *known* user cannot be called "unauthorized usage." The only thing the Commission does in the decision cited by PGW is to reinforce the point Mr. Berry is making: a known user, whether "without contract" or not, is an *authorized* user, and thus must either be billed or terminated.

Finally PGW once again cites the utterly inapposite case, *Angie's Bar v. Duquesne Light Co.* Tellingly, PGW never informs this court of the

facts of *Angie's Bar* because those facts make that case so clearly irrelevant to the case at hand. *Angie's Bar* concerned *unknown* usage that was *discovered later*. In that case, the utility was allowed to bill the consumer *when the usage was discovered*. There were further intimations in that case that the consumer may have even been deliberately hiding the usage from the utility. In the case at hand, however, PGW admits that it *knew about the usage all along*. It read Mr. Berry's meter every month. *Angie's Bar* simply has nothing to do with the instant case, except to once again reinforce the fact that we are dealing here with a *known* usage of gas, for which PGW had an obligation to bill.¹

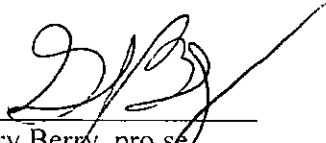
CONCLUSION

For all the reasons stated above, Mr. Berry requests this Court to find against PGW, and award Mr. Berry the charges from October 2007 to April 2008, including the security deposit, plus interest on the security deposit from April 2008, and all subsequent late fees and interest charged by PGW, and any other remedial actions the court finds appropriate such as injunctions and fines. Mr. Berry requests as well that this Court order PGW to end its practice of not billing known users of its gas, in direct

¹ The last case PGW cites, *Roderick Berry v. PGW*, is so out of left field it is difficult to even discuss in a cogent way. Maybe PGW felt its relevance was the Complainant's last name? That case regards the limitation of the period for recoupment of funds. As the limit is four years, and the instant case involves five months, the entire discussion is a frivolous waste of this court's time.

violation of its duties under the law. It has two options in this case: bill, or terminate. To fail to do either is an egregious violation of the law and its duty of honesty, good faith, and fair dealing that must be stopped.

Respectfully submitted.

A handwritten signature in black ink, appearing to read 'G. Berry', written over a horizontal line.

Gregory Berry, pro se
P.O. Box 13291
Philadelphia, PA 19101
(415) 321-9683
gregoryberry@gmail.com

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: January 6, 2011



Gregory Berry, pro se
P.O. Box 13291
Philadelphia, PA 19101
(415) 321-9683

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Gregory Berry
PO Box 13291
Philadelphia, PA 19101

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Rosemary Chiavetta, Sec'y
Pennsylvania Public Utilities Comm'n
P. O. Box 3265
Harrisburg, PA 17105

17105+3265

