

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GREGORY BERRY,)	
Complainant)	Docket No.: F-2010-2163390
)	
v.)	
)	
PHILADELPHIA GAS WORKS,)	
Respondent)	Date: June 8, 2011
_____)	

**EXCEPTIONS OF GREGORY BERRY - COMPLAINANT -
TO INITIAL DECISION OF ADMINISTRATIVE
LAW JUDGE ANGELA T. JONES,
AND REQUEST FOR ORAL ARGUMENT**

TABLE OF CONTENTS

PRELIMINARY STATEMENT..... 1
EXCEPTION NO. 1 - Complainant Is Not a “User without Contract” 4
EXCEPTION NO. 2 - The Company Tariff Requires Respondent to Bill
Complainant Monthly 8
EXCEPTION NO. 3 - Respondent Owes a Duty of Good Faith and Fair Dealing
to Complainant 9
EXCEPTION NO. 4 - Winter Termination Procedures Do Not Prohibit
Termination during Winter Months..... 12
EXCEPTION NO. 5 - PGW Approved of Complainant’s Use of Gas Service.... 14
EXCEPTION NO. 6 - 152 Days Is an Unreasonable Time for Respondent to Wait
before Contacting Complainant..... 15
EXCEPTION NO. 7 - The ALJ Relied on Evidence Not in the Record..... 17
EXCEPTION NO. 8 - Commission Decisions Regarding “Back-Billing” Are
Inapposite 18
EXCEPTION NO. 9 - Complainant Takes Exception to the ALJ’s Conclusions of
Law 19
EXCEPTION NO. 10 - Complainant Takes Exception to the ALJ’s Order 19

TO THE COMMISSION:

Gregory Berry, Complainant, respectfully submits these Exceptions to the Initial Decision in the above-captioned matter by Administrative Law Judge Angela T. Jones (the “ALJ”). In addition, the Complainant respectfully requests oral argument pursuant to 52 Pa. Code § 5.538(b).

PRELIMINARY STATEMENT

The case at hand presents the Commission with a question of first impression: Does the Respondent Philadelphia Gas Works (“PGW” or the “Company”) have a duty to send monthly bills to a *known user* of its gas? The Commission’s prior decisions, and the PGW Tariff, have left an unanticipated gap in the regulations that the Respondent is using to evade its obligations under the Pennsylvania Code. The Complainant is asking the Commission to close this gap in accordance with the spirit and letter of the Code, the PGW Tariff, and the Commission’s own prior decisions.

The Commission’s prior decisions (*e.g. Pa. Pub. Util. Comm’n v. Philadelphia Gas Works*, R-00061931; R-00051931C0001, et al., Opinion and Order, entered September 28, 2007, at 104–06,¹ <http://www.puc.state.pa.us/PcDocs/683311.doc>, available at 2007 Pa. PUC LEXIS 45) provide a framework of three possible categories in which a gas user can be placed: (1) a customer of the utility; (2) an unauthorized user

¹ Pagination refers to the original document downloaded from PUC website.

(one who has acquired service through malfeasance such as self-turn-on or meter-bypass); and (3) a “user without contract,” that is, a user receiving gas service without malfeasance but nonetheless *without the knowledge of the utility* (such as a new resident at a “soft-off” location). *Id.* The rights and duties of the gas company with regard to the user vary from one category to the next.

Those are the only three categories for a user under the law. Either he is a gas customer, or he is stealing the gas without the Company’s knowledge, or he is using the gas without the Company’s knowledge but without malfeasance. The Respondent in the case at hand has attempted to create a fourth category, that of a *known user* without a contract. This category does not and cannot exist. If the gas usage is known, and the Respondent does not begin termination procedures, then the user has constructive approval. If the use is authorized, then the user is a customer and must be treated accordingly. The categories are mutually exclusive. It is impossible to be an unauthorized user who nonetheless has permission to use the gas, and it is impossible to be a “user without contract” whom the utility nonetheless knows about.

Once the usage of gas is known, the Respondent necessarily makes a choice: either disapprove of the usage and terminate, or approve of the usage and bill. Failure to terminate is constructive approval of the usage. It is logically impossible for the utility to claim they have not authorized the

usage, yet to continue to provide the usage. Since the usage is known, the user is likewise not a “user without contract.” (*See id.*) If the Respondent is knowingly providing gas service—if it is therefore *authorizing* the gas service—it has duties and obligations under the PUC Code, namely, to bill the user monthly for the usage. If the Respondent does not want to authorize the usage, it has one option: terminate service.

The ALJ made two straightforward errors of law, and several additional logical errors in applying the law. The two errors of law are: (1) The Complainant *cannot* be a “user without contract,” since the Respondent *knew of the usage*, a direct contradiction of the definition of “user without contract.” (*See* Exception No. 1 *infra.*) (2) The winter termination procedures (52 Pa. Code § 56.100) do not prohibit the Respondent from terminating usage. They merely modify the procedures the Respondent must follow in terminating usage. (*See* Exception No. 4 *infra.*) As for the logical errors, the ALJ’s focus on the Complainant’s termination of the phone call (*see, e.g.,* Initial Decision 7 (FOF 6)), and her characterization of the Complainant’s insistence that he does not want gas service at all as “malfeasance” or “culpability” or “unclean hands,” obfuscates the question before this court. (*See* Exception Nos. 2, 3, 5, 6, 7, and 8 *infra.*) The question is not what did the Complainant do and what “should” Complainant have done. The question is, *given* the Complainant’s desire to discontinue gas service, what then were the Respondent’s responsibilities

regarding such a consumer? PGW had a choice: authorize the Complainant's use by continuing to provide service and bill him for it, same as any other authorized user, or do not authorize it and terminate service. By failing to bill the Complainant for known use of gas service, the Respondent provided inadequate and unreasonable service to the Complainant under the PGW Tariff, the Pennsylvania Code, and Commission precedent, and should therefore be held liable for the resulting charges.

The Complainant respectfully requests the Commission to modify the ALJ's Initial Decision in accordance with the Exceptions below.

EXCEPTION NO. 1 - Complainant Is Not a "User without Contract"

ALJ's Finding of Law: "The undersigned ALJ finds it reasonable for PGW to treat Complainant as a user without contract," (Initial Decision 15 [hereinafter I.D.]), or "in the alternative, an exception to an unauthorized user of gas service" (*id*).

Complainant's Exception: Complainant cannot be a "user without contract" when Respondent *knew Complainant was consuming the gas*, and likewise is not "an exception to an unauthorized user of gas service."

Supporting Reasons:

The Complainant simply cannot be a "user without contract." There is no room for debate on this point. A "user without contract" is defined as:

A residential occupant who has not engaged in self-turn-on, meter tampering or meter-by-pass, but who nonetheless is receiving gas service *without the knowledge of the utility*.

(I.D. 14 (quoting *Pa. Pub. Util. Comm'n v. Philadelphia Gas Works*, R-00061931; R-00051931C0001, et al., Opinion and Order, entered September 28, 2007, at 105,² <http://www.puc.state.pa.us/PcDocs/683311.doc>, available at 2007 Pa. PUC LEXIS 45 [hereinafter *2007 Tariff Decision*]) (emphasis added).) In the case at hand, the Respondent knew the Complainant was receiving gas service. (I.D. 13 (“Respondent knew of the gas usage at the service address from October 2007 through April 2008 Tr. 151–54, 163–70, PGW Exh. 6.”).) Since “user without contract” status requires lack of knowledge by the Company of the gas consumption, and the Respondent here knew of the gas consumption, Complainant simply cannot be a “user without contract.”

The ALJ is apparently confusing the common-law notion of “rejecting a contract offer” with the PUC *term of art* “user without contract.” Although the ALJ quoted the Commission’s definition of the term of art “user without contract” (I.D. 14), she then concluded:

[T]here was no meeting of the minds that Complainant would be a PGW gas service customer. Consequently, there was no contract for gas service between Complainant and PGW. Complainant is a user (of gas service) without a contract or, in the alternative, an exception to an unauthorized user of gas service. The undersigned ALJ finds it reasonable for PGW to treat Complainant as a user without contract.

² Pagination refers to original document downloaded from PUC website.

(I.D. at 15.) While it is certainly true that there was no meeting of the minds—that the Complainant *rejected* the Respondent’s *offer* of gas service in return for a \$365 deposit (*Id.* 7 (FOF 8))—that point has no bearing on the term-of-art category “user without contract.” Yet it is because there was no “meeting of the minds” that the ALJ found it reasonable to treat the Complainant as a “user without contract.” This is simply a confusion of terms, or misapplication of the law. Although it is true that the Complainant rejected the Respondent’s offer, it is flatly erroneous to conclude that the Complainant was a “user without contract” as that term is defined by the Commission.

The ALJ likewise erred in finding that it was reasonable for the Respondent to treat Complainant as “an exception to an unauthorized user of gas service.” (I.D. 15.) The “exception to an unauthorized user” is defined in section 6.1.B.1 of the PGW Tariff:

A residential occupant who has taken or accepted utility service *without knowledge or approval of the utility* (without self-turn-on, a meter bypass or meter tampering) is not a person who has committed “unauthorized use” or “used Gas Service without PGW authorization” within the meaning of this Tariff.

PGW Supp. No. 21, Gas Serv. Tariff-Pa. P.U.C. No. 2, 1st rev. page no. 38, Sec. 6.1.B.1 (Unauthorized Use - Exception), eff. Oct. 19, 2007 [hereinafter PGW Tariff] (emphasis added). As with the term of art “user without contract,” the unauthorized use exception applies only to a residential

occupant who has taken gas service *without the knowledge* of the utility. (See Exception No. 2, *infra*, for a discussion of the sections of the PGW Tariff that do actually apply to the case at hand (regarding billing), and Exception No. 5, *infra*, for a discussion of the claim that PGW did not “approve” the gas usage.)

The dispositive factor for the ALJ in the case at hand seems to have been the fact that the Complainant communicated to the Respondent that he *did not want to do business with PGW*. The thrust of the ALJ’s decision is that because the Complainant stated he did not want gas service, PGW was absolved of all obligations of good faith and fair dealing, and all obligations under the Code for providing that service. (I.D. 15, 16.) She couched this conclusion in an unsupported proclamation that even though the Respondent *knew* about the gas service, the Complainant was nonetheless a “user without contract.” (*Id.* at 15.) The ALJ has attempted to rewrite the Commission’s prior decisions and the PGW Tariff under a manufactured doctrine of “unclean hands” on the part of the Complainant. (*Id.* at 16.)

It is important to keep these two prongs of the decision separate and distinct. The first prong is the assertion that the Complainant is a “user without contract.” This is flatly false. The second prong, whether the Complainant’s desire not to do business with PGW equates to him acting in “bad faith” and with “unclean hands” will be discussed in Exception No. 3 below. But the two prongs are not related. The Complainant is not a “user

without contract,” and he is not an “unauthorized user.” Therefore he is a customer, and the Respondent has a duty to bill him in a timely manner (monthly) for the known use of gas service. (*See* Exception No. 2, *infra*.) The Commission’s contemplation of this case need go no further than that simple application of the law. But because the ALJ made several additional errors of law in the Initial Decision, the Complainant must take exception to them so they are not deemed admitted.

**EXCEPTION NO. 2 - The Company Tariff
Requires Respondent to Bill Complainant Monthly**

ALJ’s Finding of Law: The ALJ cited only section 6.1.B.1 of the Company Tariff as applying to the Complainant in this case.

Complainant’s Exception: Section 6.1.B.1 does not apply to the case at hand. Section 4.1.A of the Company Tariff requiring the Respondent to send the Complainant a bill every month, however, does apply.

Supporting Reasons:

The PGW Tariff requires PGW to send a bill to every Residential Customer once a month:

PGW *shall* render a bill once every month to Residential Customers. . . .

PGW Tariff, *supra*, 1st rev. page no. 26 (emphasis added). A “Residential Customer” is:

Any Customer in a dwelling (including an apartment) whose use of Gas Service is for household purposes such as space heating, air conditioning, cooking, water heating.

Id., 1st rev. page no. 11. A “Customer” is:

A person, partnership, association, corporation or other entity that purchases Gas Service from the Company.

Id. It is undisputed that the Complainant is a “person . . . that purchases Gas Service from the Company,” and it is undisputed that the Complainant lived in a “dwelling . . . whose use of Gas Service is for household purposes.” (I.D. 6 (FOF 3).) So the Complainant is a Residential Customer. Therefore, according to the PGW Tariff, the Respondent *shall* render a bill *once every month* to the Complainant. The only exception to this requirement is when the use of gas is unknown, either “unauthorized” (unknown with malfeasance), or “unauthorized - exception” (unknown without malfeasance).

The Complainant has met his burden of proof that “the application of the existing PGW tariff at issue [was] applied unreasonably in the instant Complaint.” (I.D. 15.) The ALJ erred in applying the wrong Tariff to the case at hand, and further erred in finding the Complainant failed to meet his burden of proof that the Respondent provided inadequate and unreasonable gas service.

EXCEPTION NO. 3 - Respondent Owes a Duty of Good Faith and Fair Dealing to Complainant

ALJ’s Finding of Law: “Complainant’s argument [that Respondent owed a duty of fair dealing and good faith] must fail because Complainant knowingly used gas service without completion of his contract with the Company.” (I.D. 15.)

Complainant's Exception: The Respondent does owe a duty of good faith and fair dealing to Residential Customers. That obligation is independent of the Complainant's conduct. Even if Complainant's conduct were relevant, nothing in the record indicates bad faith on his part. Respondent, on the other hand, clearly violated its duty of good faith and fair dealing.

Supporting Reasons:

The Respondent has a duty of good faith and fair dealing. The Pa.

Code provides:

Every privilege conferred or duty required by this chapter imposes an obligation of good faith, honesty and fair dealing in its performance and enforcement.

52 Pa. Code § 56.1. The Respondent violated that duty. By failing to contact the Complainant in any way for *five months* as an appalling \$800 per month in gas service was consumed during the winter, the Respondent violated its specific duties to bill the customer for the known use of gas. *See* 52 Pa. Code § 56.11; PGW Tariff, *supra*, 1st rev. page no. 26. By allowing the usage to continue for five months, then claiming it did not approve of the usage, it has acted in bad faith. By waiting five months before making any attempt to terminate service, it has acted in bad faith. (I.D. 7 (FOF 11).) By applying the deposit that the Complainant paid in April 2008 to the disputed balance rather than keeping it as a security deposit, it has acted in bad faith. (I.D. 8 (FOF 17).) By sending Complainant another termination notice, *during this pending Complaint*, Respondent has acted in bad faith. (I.D. 9 (FOF 21).) By placing liens on

Complainant's property during this pending Complaint, Respondent has acted in bad faith. (I.D. 9 (FOF 22).) By sending Complainant collections letters during this pending Complaint, Respondent has acted in bad faith. (I.D. 9 (FOF 23).)

The Respondent's duty of good faith and fair dealing is independent of any action taken by the Complainant. Whatever Complainant might have done has no impact on the overwhelming bad faith conduct of the Respondent for the entire time in question. Because it acted in bad faith, it has provided inadequate and unreasonable service to the Complainant.

Even if the duty of good faith did depend on the conduct of the other party, there is nothing in the record to indicate bad faith on the part of the Complainant. He felt the Respondent's security demand was outrageous, he said so, and he hung up. (I.D. 7 (FOF 8).) He could not have been clearer that he wished to discontinue service. When the Respondent sent someone to the residence anyway, he repeated clearly that he was rejecting Respondent's contract offer. (I.D. 12 (FOF 47).) He could not have been more direct, fair, or up-front that he wished the service to be discontinued. He acted entirely in good faith during all his interactions with PGW, even when confronted with liens and collection letters during the pendency of this Complaint.

**EXCEPTION NO. 4 - Winter Termination Procedures
Do Not Prohibit Termination during Winter Months**

ALJ's Finding of Law: "Once December 1, 2007 occurred, Respondent would be in violation of Commission regulation if gas service was terminated" (I.D. 18.)

Complainant's Exception: The Winter Termination Procedures do not prohibit termination of gas service during the winter months. They only modify the procedures required to doing so.

Supporting Reasons:

From December 1 to March 31, the Respondent must follow a special set of procedures for terminating service. 52 Pa. Code § 56.100 still allows the utility to terminate service during the winter, only the procedure is more involved. First, the Respondent must notify the gas service recipient according to *id.* §§ 56.91–95 (requiring notice by mail then personal contact). *Id.* § 56.100(1). Then the Respondent must register with the Commission a request for permission to terminate service. *Id.* § 56.100(2).

The ALJ erred when she found that "Once December 1, 2007 occurred, Respondent would be in violation of Commission regulation if gas service was terminated" (I.D. 18.) 52 Pa. Code § 56.100, as quoted by the ALJ in the Initial Decision, provides that:

Notwithstanding another provision of this chapter, during the period of December 1 through March 31, utilities subject to this chapter shall conform to the provisions of this section. The covered utilities may not be permitted to terminate heat related service between December 1 and March 31 *except as provided in this section* or in § 56.98 (relating to exception

for terminations based on occurrences harmful to person or property).

(I.D. 18 (emphasis added).) “Except as provided in this section” refers to the modified procedures described above: in order to terminate service the Respondent must first give notice to the user, then request permission from the Commission before termination. The ALJ seems to believe the “winter moratorium” allows termination for unauthorized usage, but prevents it for user without contract. (“Once December 1, 2007 occurred, Respondent would be in violation of Commission regulation if gas service was terminated *because the usage was not unauthorized and thus, is not an exception to the winter moratorium.*” (*Id.* (emphasis added).) This is simply not the law. The winter termination procedures require Commission permission even in the event of unauthorized usage, and *permit* termination even for users without contract, subject to Commission permission. (In fact, the phrase “winter moratorium” appears nowhere in either Title 52 of the Pennsylvania Code or the PGW Tariff. The ALJ apparently got this phrase from PGW’s internal policy regarding winter termination. The fact that PGW’s internal policy leads to inadequate and unreasonable service is exactly the subject of the present case.)

EXCEPTION NO. 5 - PGW Approved of Complainant's Use of Gas Service

ALJ's Finding of Fact: "[I]t is also evident from the facts that PGW did not approve of the use of gas service by Complainant at the service address during the time period at issue." (I.D. 15.)

Complainant's Exception: The record provides irrefutable evidence that PGW approved of the Complainant's use of gas service.

Supporting Reasons:

The undisputed facts show unequivocally that the Respondent approved of the Complainant's use of the gas service. After the Complainant rejected the Respondent's contract offer during the October 29³ phone call, the Respondent sent a technician to the service address to turn on the gas. (I.D. 12 (FOF 47).) This occurred *after* the Complainant rejected the Respondent's contract offer. Since the Respondent attempted to turn on the gas anyway, it can only mean that the Company approved of providing the service to the Complainant even though he had rejected the contract offer. Thereafter the Respondent allowed the Complainant to continue receiving gas service for five months. At no time during the 23 days after the technician was dispatched did the Respondent begin termination procedures. And at no point during the following four months did it begin winter termination procedures or request permission from the Commission to terminate service. It is impossible to say the Respondent

³ The ALJ's Findings of Fact are inconsistent regarding the date of the October 2007 phone call. The exact date is unimportant to the case, so Complainant has adopted October 29 arbitrarily.

did not approve of the Complainant's receipt of the gas service when it did nothing for five months to indicate otherwise, while continually providing that service to the Complainant.

The ALJ relied on statements by the Respondent's witness regarding PGW application policy to conclude that PGW did not approve of the Complainant's use of gas service. (I.D. 15.) These policies, however, have no bearing on whether PGW authorized the usage. The Respondent's internal policies do not absolve it of responsibility, they *are* its responsibility. If the thing that caused PGW to fail to bill the Complainant for five months and treat him in bad faith was its internal policies, then those need to change. But they have no bearing on whether adequate and reasonable service was provided. As the preceding discussion makes clear, by sending a technician to the Complainant's house to turn on the gas, and then making no effort to terminate service for five months, it is impossible to find other than that the Respondent approved of the gas usage. And by failing to bill the Complainant during this time, the Respondent failed to provide adequate and reasonable service.

EXCEPTION NO. 6 - 152 Days Is an Unreasonable Time for Respondent to Wait before Contacting Complainant

ALJ's Finding of Fact: "There are 23 days from November 8 to November 31, 2007.[sic] . . . While it is possible that Respondent could have contacted Complainant to start a 72-hour pre-termination notice for

usage of gas without a contract, I do not find it [un]reasonable under the circumstances that Respondent did not.”⁴ (I.D. 18.)

Complainant’s Exception: The ALJ was concerned with the wrong time period. The relevant time period is from the last contact with the technician on November 8, 2007, to the day PGW finally contacted the Complainant again, April 8, 2008. (I.D. 18.) It is not reasonable for PGW to wait 152 days, knowing the Complainant is using gas service, before billing him or terminating the service.

Supporting Reasons:

Whatever time period the Commission decides is reasonable for the gas company to wait *after being told the user wishes to discontinue service*, there can be no question that 152 days is too long. During that waiting period, the Complainant was a known user of the gas service, and must be billed in a timely manner. What is a reasonable waiting period is of course somewhat arbitrary. Perhaps the ALJ’s 23 days is reasonable. (One week seems more reasonable when the Respondent has been told the user wishes to discontinue service.) 152 days—in other words, *five* billing periods—is unreasonable. PGW’s neglect in billing the Complainant for the service it was aware of and approved of was inadequate service under the law.

The ALJ concluded that after the 23 days the Respondent could not terminate the gas service because of the “winter moratorium.” As was explained in Exception No. 4 above, this “winter moratorium” is an internal

⁴ Surely the ALJ misspoke. The line should have read “I do not find it unreasonable under the circumstances that Respondent did not.” Likewise there is no doubt the ALJ knows how many days are in November. Whether 22 or 23 days is not significant for this exception.

PGW policy, not a Commission regulation or Company Tariff. Nothing prevented the Respondent from contacting the Complainant after December 1; the Respondent chose not to. Whether the choice was made in this case specifically or through bad policy decisions prior to this incident is irrelevant to this case.

EXCEPTION NO. 7 - The ALJ Relied on Evidence Not in the Record

ALJ's Finding of Fact: "I find it compelling that [during] the last contact on November 8, 2007, Complainant implied that if he needed the gas services of Respondent, he would contact Respondent. FOF 47 I do not find it unreasonable for Respondent to wait three weeks to see if the occupant of the service address would contact the Company." (I.D. 18.)

Complainant's Exception: The ALJ is relying on this evidence for its effect on the listener PGW. But no evidence is in the record that indicates that PGW in fact *did* rely on the conversation reported by the technician.

Supporting Reasons:

The ALJ based her holdings regarding the reasonableness of the Respondent waiting before contacting the Complainant on evidence that is simply not in the record.⁵ The "compelling" piece of evidence for the ALJ was the phone conversation of November 8. (I.D. 18.) She concluded from

⁵ Please note that the ALJ's holding regarding the reasonableness of the Respondent not contacting the Complainant for 152 days fails for two other reasons discussed previously. The ALJ misunderstood the Pa. Code regarding winter termination procedures (*see* Exception No. 4 *supra*), and erroneously concluded that the Respondent was prevented from contacting the Complainant during the winter months (*see* Exception No. 6 *supra*). Regardless of those two errors, the ALJ based her decision on evidence not in the record, which is the subject of the present Exception.

this phone call that “I do not find it unreasonable for Respondent to wait three weeks to see if the occupant of the service address would contact the Company.” (*Id.*) But no evidence is in the record indicating that the Respondent in fact waited three weeks to contact the Complainant *because of this call*. The ALJ’s conclusion that it was reasonable to wait three weeks for the Complainant to call back is pure speculation based on hypothetical evidence that the ALJ filled in herself. If the Respondent had wanted to present evidence to the effect that it relied on the November 8, 2007, call in waiting for three weeks for the Complainant to call back, it had every opportunity to do so. It did not, and it is prejudicial and unfair to the Complainant for the ALJ to decide this case based on hypothetical evidence not in the record.

EXCEPTION NO. 8 - Commission Decisions Regarding “Back-Billing” Are Inapposite

ALJ’s Finding of Law: “The Commission limited back-billing to a four-year period where the customer has no culpability. *Angie’s Bar v. Duquesne Light Co.*, 72 Pa. PUC 213, 1990 Pa. LEXIS 4, 12; *see also, Roderick Berry v. Philadelphia Gas Works*, F-01184412, Opinion and Order, entered April 15, 2004, 2004 Pa. PUC LEXIS 27, 12–13.” (I.D. 18–19.)

Complainant’s Exception: The ALJ misconstrued the Commission’s decisions on back-billing. Both *Angie’s Bar* and *Roderick Berry* involve *unknown* service usage that was billed *upon discovery*. They have no relevance to this case where the Respondent was aware of the gas usage the entire time.

Supporting Reasons:

Both *Angie's Bar* and *Roderick Berry* involve unknown gas usage that was discovered at a later date. Neither case contemplated the situation where the Respondent would attempt to “back-bill” for usage of gas service that it knew about. Even these two cases were decided against a background that the Respondent must bill the user in a timely manner, and that consumers rely on those bills to understand and monitor their gas usage to correct problems as they arise.

The issue before this Commission in the case at hand is what to do in the situation where the Respondent is violating this most basic service requirement—to notify the consumer of usage via timely bills. The Complainant cannot have known of the excessive use of gas. The Respondent did know, and did not lift a finger to inform the Complainant of the problem. This conduct cannot be allowed to stand.

EXCEPTION NO. 9 - Complainant Takes Exception to the ALJ's Conclusions of Law

Complainant's Exception: The Complainant takes exception to each of the ALJ's Conclusions of Law (in particular, 4, 5, and 10) that are inconsistent with the Complainant's Exceptions presented above.

EXCEPTION NO. 10 - Complainant Takes Exception to the ALJ's Order

Complainant's Exception: The Complainant takes exception to the ALJ's Order. For the reasons set forth above, Respondent is responsible for the gas service from October 29, 2007, to May 6, 2008. The

Respondent should also pay Complainant whatever additional fees and interest the Commission finds appropriate.

Respectfully submitted,

Gregory Berry, pro se
106 Pinehurst Avenue, Apt. C-63
New York, NY 10033
(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 Respondent:

Laureto Farinas, Esquire
Philadelphia Gas Works
800 W. Montgomery Avenue
Philadelphia, PA 19122
(215) 684-6982

For Commission:

Office of Special Assistants
Third Floor
Keystone Building
400 North Street
Harrisburg, PA

Date: June 9, 2011

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