



**PHILADELPHIA GAS WORKS**

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June 20, 2011

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 52 Pa. Code §5.535, the Philadelphia Gas Works ("PGW") hereby files an original and nine (9) copies of its reply to the Complainant's exceptions to the May 20, 2011, Initial Decision in the above captioned matter.

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

Sincerely,

  
Danielle Ross

Enclosure

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Gregory Berry,</b>	:
Complainant	:
	:
<b>v.</b>	: <b>Docket No. F – 2010 – 2163390</b>
	:
<b>Philadelphia Gas Works,</b>	:
Respondent	:

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

Pursuant to 52 Pa. Code §5.535, the Philadelphia Gas Works, (“PGW”) hereby files an original and nine (9) copies of its reply to the Complainant’s exceptions to the May 20, 2011, Initial Decision (Initial Decision) and to the Complainant’s request for oral argument before this Commission. For the reasons stated herein, PGW respectfully requests that the Commission deny the exceptions and adopt the Initial Decision without modification. PGW further requests that the Commission deny the Complainant’s request for oral argument in this matter as it is unnecessary.

**I. INTRODUCTION**

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.<sup>1</sup> 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.<sup>2</sup>

On October 30, 2007, the Complainant called PGW to schedule the turn on for gas

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<sup>1</sup> Complaint Attachment, p. 2

<sup>2</sup> Tr. pp. 201 – 203

service for the Service Address.<sup>3</sup> PGW and the Complainant originally scheduled a turn on date of November 8, 2007, but the turn on did not occur.<sup>4</sup> On the October 30, 2007 telephone call to PGW, the Complainant learned that PGW required the payment of a security deposit for gas service. Upon learning of the deposit requirement, the Complainant terminated the October 30, 2007 telephone call with PGW.<sup>5</sup> 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.<sup>6</sup> 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 billing system.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> PGW also requested a deposit from the Complainant pursuant to its Tariff

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<sup>3</sup> PGW Exhibit 4, p 3 of 4 and Tr. p. 87

<sup>4</sup> Tr. p. 87 and pp. 232 and 233

<sup>5</sup> Tr. pp. 87 – 97

<sup>6</sup> Id.

<sup>7</sup> Tr. pp. 162 - 165

<sup>8</sup> Tr. pp. 232, 233

<sup>9</sup> Initial Decision, Finding of Fact 10, Tr. pp. 151 – 154, 163 – 170 and PGW Exhibit - 6)

<sup>10</sup> Tr. pp. 166 – 167

<sup>11</sup> Decision of the BCS, PGW Exhibit 1

authorization.<sup>12</sup>

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 used the service..."<sup>13</sup>

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."

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. On May 20, 2011, the Commission issued the Initial Decision, dismissing the Complaint.

On or about June 9, 2011, the Complainant filed exceptions to the Initial Decision and a request for Oral Argument before this Commission. This reply follows.

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<sup>12</sup> 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.

<sup>13</sup> Decision of the BCS, PGW Exhibit 1

## **II. REQUEST FOR ORAL ARGUMENT**

Pursuant to 52 Pa. Code §5.538(b), the Complainant has requested oral argument in this matter. PGW objects to the Complainant's request in this regard, as oral argument is unnecessary. This case contains no extraordinary or unique issues that warrant oral argument. The Initial Decision is well supported by sound Commission case law governing the provision of gas service and billing. Therefore, the Commission should deny the Complainant's request for oral argument.

## **III. PGW'S REPLY TO EXCEPTIONS**

The Complainant's exceptions fail to address adequately any error in fact or law contained in the Initial Decision.

### **Reply to Exception 1**

#### **The Complainant fails to show that he was not a 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.<sup>14</sup>

The Complainant argues that since PGW "knew" that he was using the gas service, he could not be considered a "user without contract." Because the Complainant failed to complete his application for gas service, PGW was deprived opportunity have a complete picture of the user of gas. A completed application would have resulted in the Complainant's receiving a bill each month. In that sense, the Complainant's failure to complete the application for gas service deprived PGW of complete "institutional"

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<sup>14</sup> 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

knowledge of his use of gas service and a completed contract. While an examination of the contact records and filed visits gives PGW evidence of who was using the gas service, the Complainant's failure to complete his application for service provides a view that the Complainant attempted to avoid receiving a monthly bill as a customer with a completed contract for gas service would receive. The Initial Decision states that the Complainant does not have "clean hands" as the Complainant caused the termination of the application process and communicated to the PGW that he would contact PGW when he desired gas service.<sup>15</sup> As the Complainant used the gas service but did so without a completed contract for gas service, the Complainant was a "user without contract." The Commission should deny this exception.

## **Reply to Exception 2**

### **The Complainant's Failure to Complete the Application Process Caused PGW's Inability to Bill for Gas Service.**

The record evidence shows that the Complainant is culpable for the failure to complete his application for service with PGW. As such, PGW inability to bill for several months does not rise to the provision of inadequate service on the part of PGW and does not excuse the Complainant from the responsibility for payment of charges for service for the disputed period. The Complainant terminated the application process. 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. 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 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

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<sup>15</sup> Initial Decision, Findings of Fact, 47, Tr. p 233, PGW Exhibit 4

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.<sup>16</sup> The Complainant cannot now hide behind this conspicuous technicality that he lacked a contract, did not receive bills, and therefore is not responsible for payment

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 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.

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<sup>16</sup> Tr. pp. 232 and 233

**Reply to Exception – 3**

**The Record Evidence Shows Clearly the Complainant’s Lack of Good Faith and Fair Dealing.**

In Exception No. 3 the Complainant fails to show how PGW’s actions were done in anything less than good faith. The Initial Decision states that the Complainant does not have “clean hands” as the Complainant caused the termination of the application process and communicated to the PGW that he would contact PGW when he desired gas service.<sup>17</sup> As the Complainant used the gas service but did so without a completed contract for gas service, the Complainant was a “user without contract.” The Commission should deny this exception.

**Reply to Exception – 4**

**The Complainant Fails to Show That the Operation of the “Winter Termination” Procedures Is Inadequate Service.**

In Exception No, 4, the Complainant argues that PGW procedures to refrain from termination of gas service except in hazardous situations during the period from December 1 through March 30 of each winter season is inadequate service. The mention of PGW’s “Winter Moratorium” in the context of this proceeding is only to state the reason that PGW did not terminate service to the Complainant, a “user without contract.” PGW sent to the Service Address a 72 hour notice of termination at the conclusion of the Winter Moratorium. The self-imposed restraint on service termination, where there is not safety issues, serves to support heat for households during the winter.

**Reply to Exception – 5**

**The Record Evidence Does Not Support the Complainant’s Argument that PGW Approved of the Complainant’s Gas Use.**

In Exception No. 5, the Complainant argues that there is irrefutable evidence that PGW approved of the Complainant’s use of gas service. With Exception

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<sup>17</sup> Initial Decision, Findings of Fact, 47, Tr. p 233, PGW Exhibit 4

No. 5, the Complainant further extends that argument not only did PGW know but approved of the Complainant's use of gas service. Because the Complainant failed to complete his application for gas service, PGW was deprived opportunity have a complete picture of the user of gas. A completed application would have resulted in the Complainant's receiving a bill each month. In that sense, the Complainant's failure to complete the application for gas service deprived PGW of complete "institutional" knowledge of his use of gas service and a completed contract.

While an examination of the contact records and filed visits gives PGW evidence of who was using the gas service, the Complainant's failure to complete his application for service provides a view that the Complainant attempted to avoid receiving a monthly bill as a customer with a completed contract for gas service would receive. If PGW had full knowledge and "approved" of the Complainant's gas usage, there would have been a completed application showing such knowledge and approval. Without the completed application for gas service, PGW could not have approved of the Complainant's gas usage in the institutional sense resulting in monthly billing.

As the Complainant used the gas service but did so without a completed contract for gas service, the Complainant was a "user without contract." The Commission should deny this exception.

**Reply to Exception – 6**

**The Complainant fails to show that given the time of year, the winter heating season, sending a termination notice after the end of the winter heating seasons was unreasonable.**

See PGW's Reply to Exception No. 4.

**Reply to Exception – 7**

**Reliance on Record Evidence**

The Complainant errs in characterizing the conclusion in the Initial Decision that PGW would wait a period of time is relying on evidence not of record. The Administrative Law Judge simply applies common sense that after being told on November 8, 2007 that such an action would occur (the Complainant applying for gas service), it is reasonable to

expect that a reasonable utility would wait three weeks to see if such an action did occur. The Commission should deny this exception.

**Reply to Exception – 8  
The Complainant Fails to Show How the Commission’s Decisions on Billing for Previously Unbilled Service are Inapposite.**

See PGW’s Reply to Exception No. 2.

**Exception – 9 and 10**

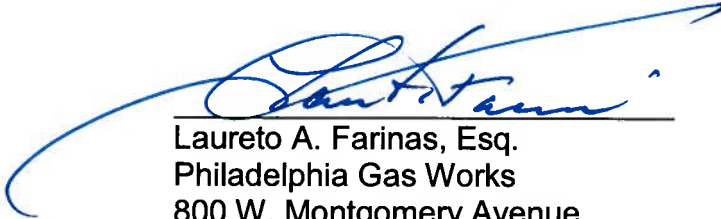
For the reasons stated above these exceptions should be denied.

**IV. CONCLUSION**

For the reasons stated above, the Commission should deny the Complainant’s exceptions and adopt, completely the Initial Decision May 20, 2011 in this matter.

Respectfully submitted,

June 20, 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:

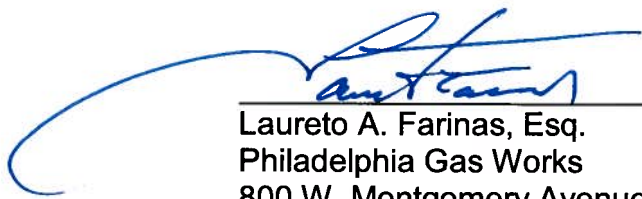
Mr. Gregory Berry  
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June 20, 2011



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